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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~416~~. 142

JOHN F. DRAVO AND ROBERT ARTHURS, ASSIGNEES OF JOHN DIPPOLD & SONS, APPELLANTS,

vs.

PHILIP FABEL AND KATE FABEL, HIS WIFE; AND JOHN DIPPOLD AND FANNIE DIPPOLD, HIS WIFE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 11, 1886.

Abstract 1890

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1 Among the rolls, records, and judicial proceedings had in the circuit court of the United States in and for the western district of Pennsylvania, entered at No. 11, May term, 1886, equity docket, wherein John F. Dravo and Robert Arthurs, assignees of John Dippold & Sons, are complainants, and Phillip Fabel & wife *et al.* are respondents, may be found the following words and figures, to wit:

Equity Docket Entries.

JOHN F. DRAVO and ROBERT ARTHURS, Assignees of John Dippold & Sons,

vs.

PHILLIP FABEL and KATE FABEL, His Wife; JOHN DIPPOLD and NANNIE DIPPOLD, His Wife.

Appeal from the decree of the U. S. district court, at No. 4 of October term, 1879, in equity.

[On margin:] J. H. McCreery, D. T. Watson, W. S. Pier, Weir & Garrison.

December 1, 1885.—Transcript of record from U. S. district court received and filed.

1886, May 21.—Argument in part had upon the appeal herein. May 22.—Argument continued. May 24.—Argument concluded, *c. a. v.* 1886, May 26.—The appeal is dismissed and the decree of the U. S. district court is affirmed.

1886, July 27th.—Final decree dismissing appeal entered.

1886, September 25.—Bond on appeal of John F. Dravo &
2 Robert Arthurs, assignees, appellants, approved and filed.

Same day, appeal to the U. S. Supreme Court, returnable to the second Monday of October next, allowed by Hon. M. W. Acheson; also citation allowed, returnable at same time and place.

3 *Marginal Entries.*

Wm. S. Pier. April 13, 1885.
McCreery & Watson.

Wier & Gibson.
Knox & Reed.
Oct. 4, 1879.

Statement.
$20.00 } H. W. W.
Sol. Doc. Fee, } K. & R., $75.00.
On depositions, $130.00 { H. W. W. / K. & R.
Fees of respt. witns., $5.70. See receipts below.
Marshal, $10.00. J. H.

Clerk, $11.35. S. C. McC.

F. C. M. for taking a deposition as N. P., $5.00. Rec'd Sept. 21.
F. C. M.

S. C. McC., for deposition taken by order of court.	$2.50	S. C. McC. W. T. L.

Costs other than
Examiner, $185.05.
Sept. 21, 1885.—Received of
S. C. McCandless, clerk,
the sum of three dollars,
witness fees. F. W. Smith.
Received Sept. 24, 1885, of
S. C. McC., two and $\frac{78}{100}$
dollars, fees of J. Sharp
McDonald, witness, as per
his order. H. W. Weir.

JOHN F. DRAVO and ROBERT ARTHURS, Assignees of John Dippold & Sons,
versus
PHILIP FABEL and KATE FABEL, His Wife; JOHN DIPPOLD and NANNIE DIPPOLD, His Wife.
} No. 4. October Term, 1879.

June 13, 1879, bill in equity filed; same day, summons issued, returnable first Monday of July, 1879.

June 17, 1879, service of subpœna accepted.

August 19, 1879, on motion of solicitors for respondents, time for filing answer extended 15 days.

September 5, 1879, on motion of solicitors for respondents, time for filing answers further extended 15 days.

September 6, 1879, notice of motion to set aside order extending time to answer.

Same day, service of notice accepted by Mr. Gibson, attorney for respondents.

September 23, 1879, answers of John Dippold and wife filed.

September 25, 1879, answer of Philip Fabel and wife filed.

September 27, 1879, replication filed.

October 2, 1879, notice to respondents that application will be made for an examiner filed.

Same day, service accepted.

Same day, affidavit and order appointing James H. Reed examiner, and directing him to take testimony at Louisville, Ky., filed.

October 4, 1879, order substituting William Scott, Esq., as examiner in place of James H. Reed filed.

Same day, præcipe for appearance of Messrs. Knox & Reed for Philip Fabel and wife filed.

October 22, 1879, testimony taken at Louisville, Ky., before William Scott, Esq., examiner, filed.

November 11, 1879, bill of expenses of examiner, taking testimony at Louisville, filed.

May 17, 1880, depositions taken for complainants in said case at Louisville, Ky., filed.

November 15, 1880, on motion of solicitors for plaintiffs, rule on respondents to close their testimony within thirty days after service.

January 5, 1881, on motion of attorneys for defendants and proof of service of notice of said motion filed, the time for taking testimony extended to the 15th prox.

June 6, 1882, rule on examiner to show cause why he should not file the testimony taken before him, returnable 10th inst.

July 29, 1884, on motion of H. W. Wier, attorney for defendants, rule granted upon William Scott, Esq., to show cause why he should not file the testimony taken before him in this case.

August 6, 1884, answer of William Scott to said rule filed.

November 25, 1884, testimony filed.

April 10, 1885, praecipe for appearance of William S. Pier, Esq., for complainants filed.

Same day, by order of court, reproduced testimony, deposition of Frank W. Smith, and agreement of counsel filed April 29, 1885, argument on said bill, etc., and further argument continued till the 30th inst.

April 30, 1885, further argument *c. a. v.*

June 17, 1885, on motion of solicitor for plaintiffs and affidavit filed, an order was made for examination of Frank W. Smith before S. C. McCandless.

Same day, deposition of Frank W. Smith filed.

August 25, 1885, opinion of the court and order of the court that a decree be drawn dismissing the bill with costs, to be paid out of the estate in bankruptcy, filed.

August 27, 1885, defendants' bill of witness fees filed.

August 28, 1885. The following is a copy of the

Decree.

"And now, August 28, 1885, this case having come on for final hearing, and having been argued by counsel on both sides, the court upon consideration of the bill, answers, and proofs, do order, adjudge, and decree that the bill be dismissed, and that the costs be paid by the complainants out of the bankrupt assets of John Dippold & Sons which have or may come into the hands of the said complainants.

"BY THE COURT."

September 10, 1885, exceptions to said decree filed.

September 19, 1885, received of John F. Dravo, Esq., one of said assignees, plaintiffs, the sum of $185.05, costs, as per margin, which does not include examiner's fees alleged to have been paid by plaintiffs.

September 29, 1885, petition filed and leave granted said assignees to remove said cause by appeal into the circuit court.

Same day, bond on appeal filed and approved.

6 In the District Court of the United States for the Western District of Pennsylvania. In Equity.

JOHN F. DRAVO and ROBERT ARTHURS, Assignees in Bankruptcy of John Dippold, John H. Dippold, Martin Dippold, and Jacob H. Dippold, Partners as John Dippold & Sons,

versus

PHILIP FABEL and KATE FABEL, His Wife; JOHN DIPPOLD and NANNIE DIPPOLD, His Wife.

To the honorable the judge of said court:

Your orators complain and say—

First. That heretofore, to wit, on the 28th day of February, A. D. 1878, to No. 3288, in bankruptcy, in your honorable court, the said John H. Dippold presented his petition setting forth the inability of the firm of John Dippold & Sons to pay their debts, and for other causes therein alleged prayed that the said firm, each and every member thereof, might be adjudged bankrupts; that, in pursuance of the petition so filed and in accordance with the orders and decrees of your honorable court in that behalf made, the said John Dippold, John H. Dippold, Martin Dippold, and Jacob H. Dippold were duly adjudged bankrupts by your honorable court on the first day of March, A. D. 1878.

Second. That after the adjudication in bankruptcy an election was duly and legally held for the selection by the creditors of assignees of the said bankrupts, and your orators were by said creditors duly selected as assignees on the 23d day of March, A. D. 1878, which said election was subsequently, to wit, on the 23d day of March, A. D. 1878, approved by your honorable court, and on the 23d day of March, A. D. 1878, N. W. Shaffer, Esq., the proper register in bankruptcy, in accordance with the provisions of the laws relating to bankruptcy, did duly execute and deliver to your orators, as assignees as aforesaid, a deed or conveyance whereby all the right, title, interest, and claim of each one of the said bankrupts in and

7 to all properties, real, personal, or mixed, were duly vested in your orators, and the said conveyance has been duly and legally recorded.

Third. That in January, 1876, John Dippold was legally seized and possessed of two certain tracts of land situate and being in the township of Economy, in the county of Beaver and State of Pennsylvania, now called the borough of Baden, which are bounded and described as follows: Beginning on the Ohio river, at the dividing line between the premises herein described and the northern part of said tract, held by James Moon, and running thence by the same north 81 degrees east $59\frac{5}{10}$ perches, more or less, across the Pittsburgh, Ft. Wayne & Chicago railway to a point on the Beaver road, and thence by the same south 140 degrees east $6\frac{45}{100}$ perches; thence by the dividing line aforesaid north $73\frac{3}{4}$ degrees east $63\frac{8}{10}$ perches to a post; thence north 69 degrees and 2 minutes east $296\frac{7}{10}$ perches to a tract called No. 50; thence by the same south $\frac{3}{4}$ degrees west $171\frac{5}{10}$ perches to a stone; thence north $89\frac{3}{4}$ degrees

west 399 5/10 perches to a sugar tree on the bank of the Ohio river; thence down to the Ohio river—low-water mark—north 2½ degrees west 44 perches to the place of beginning, containing two hundred and thirty-seven and three-fourths (237¾) acres, and bounded on the north by lands of James Moon, east by land of George C. Minis, south by land of Albert Hall, and west by the Ohio river, being the southern part of tract No. 23, in the second leet's district

Also of all that other certain tract of parcel or land situate in said township of Economy, in said county of Beaver, which is bounded and described as follows: Beginning at the southeast corner post on the west or lower side of the Beaver and Pittsburgh road as now (1863) traveled, thence along the lower side of said road in a southerly direction thirty perches to a post on the west side of said road; thence south eighty-eight and one-fourth degrees west eighty (80) perches to a post on the river bank; thence north twenty perches down the river to a post; thence north eighty-eight and one-half degrees east forty-four perches to a post; thence west thirteen degrees north eight and six-twentieths perches to a post; thence north eighty-eight and one-half degrees east twenty-eight perches to the place beginning, containing eleven acres and one hundred perches.

Fourth. That by the records in the recorder's office of Beaver county by occupation and use by the said John Dippold of the said properties, by a declaration of the said John Dippold that he was owner of the said properties, the public and creditors dealing with the firm of John Dippold & Sons and the said John Dippold believed and were assured that the same John Dippold still was and continued to be the lawful owner of the said properties until
8 within a few days preceding said petition in bankruptcy, and in pursuance of the said belief as to the ownership by the said John Dippold of the said properties the said creditors were induced to trust and confide in him and loaned to the firm of Dippold & Sons large sums of money and trusted them in divers and sundry ways in matters involving large sums of money until at the date of the filing of the petition as aforesaid the said firm of John Dippold & Sons, mainly and chiefly of financial responsibility by reason of the said John Dippold, had incurred debts to an amount exceeding $70,000.

Fifth. That on the 16th day of February, 1878, there was entered on the record in the recorder's office of the county of Beaver aforesaid a deed from John Dippold and Annie, his wife, to Philip Fabel and Kate, his wife, the respondents herein, for the said last-described tract of land, containing, as aforesaid, eleven acres and one hundred perches; said deed purported to bear date January 22d, 1876, and the consideration therein named was the sum of ten thousand (10,000) dollars. On said February 16th, 1878, there was another deed recorded in said county, purporting to bear date January 26th, 1876, for the said tract of land, containing two hundred and thirty-seven and three-fourths (237¾) acres, in which the consideration named was eighteen thousand (18,000) dollars; said deed was from the said John Dippold and wife to the said Philip Fabel and wife.

Sixth. That the said Kate Fabel was the daughter of John Dippold, her maiden name being Kate Dippold; that neither the said Philip Fabel nor the said Kate Fabel were possessed of sufficient means to purchase the said properties; and your orators charge that the said deed and the conveyances by the said John Dippold and wife to the said Philip Fabel and Kate Fabel, his wife, were made with the intent and for the purpose of defrauding the creditors of the said John Dippold, and to hinder, delay, and prevent the said property from going to or being distributed by the assignees in bankruptcy of the said John Dippold, and for the purpose of preventing, hindering, and delaying the creditors of the said John Dippold in the collection of any debts off of and from the said John Dippold.

Seventh. Your orators further charge conspiracy and combination between the said Philip Fabel and Kate, his wife, and the said John Dippold and other persons to your orators unknown, and by means whereof it was arranged that the said John Dippold should convey to the said Philip Fabel, by deeds as aforesaid, the said described properties in order that said properties could be held by the said Philip Fable and Kate, his wife, for their benefit and the benefit of the said John Dippold, freed and discharged from any claims
9 on the part of the said creditors of the said John Dippold, and by reason and in pursuance of the conspiracy and combination as aforesaid said deeds were made and executed by the said John Dippold some time prior to their recording as aforesaid, but at what date your orators are not informed and cannot say.

Eighth. That the said deeds and conveyances as aforesaid were a means and contrivance between the said Philip Fabel and Kate, his wife, and the said John Dippold, and other persons to your orators unknown, by means and by reason whereof the said properties of the said John Dippold were to be in such condition as to the title thereof that if at any time the said John Dippold should become seriously and financially embarrassed it might be made to seem that said John Dippold was not the owner of said properties.

That in January, 1876, the said John Dippold, as a member of the firm of John Dippold & Sons, was largely engaged in business, was borrowing large sums of money, and continued so to be engaged in business and borrowing large sums of money down until the date of the petition in bankruptcy, hereinbefore mentioned, and that during all of said time the said respondents and the said John Dippold did combine and agree and conspire to the effect that it should be believed by the public generally and by creditors dealing with the said John Dippold that the said John Dippold was the owner of the said properties hereinbefore described, and by reason and by means thereof the said creditors would be and were induced to trust and confide in the financial responsibility of the said John Dippold.

Ninth. And your orators charge that the said deeds, as against themselves, assignees in bankruptcy, and as against creditors of the said John Dippold, are fraudulent and void.

They therefore need equitable relief, and pray your honor as follows:

First. That you will order and direct a writ of subpœna, under

the seal of this honorable court, to be issued and directed to the said Philip Fabel and Kate, his wife, and John Dippold and Annie, his wife, the respondents herein, commanding them and requiring them, at a date therein named, to appear in your honorable court to answer the charge hereinbefore named.

Second. That this honorable court will order, adjudge, and decree that the said deeds of January 26, 1876, and of January 22, 1876, from the said John Dippold and wife to the said Philip Fabel and wife be declared null and void, fraudulent as to creditors, and conveying or vesting no right or title to the said properties therein described to the said Philip Fabel and Kate, his wife, but that the lawful title to the said properties described in said deeds is now in and of right should be in your complainants, as assignees in bankruptcy of the said John Dippold.

Third. That your honorable court will order and direct the said Philip Fabel and Kate, his wife, to cancel and deliver up to your orators the said deeds of January 26th, 1876, and January 22d, 1876, from John Dippold and wife to the said Philip Fabel and purporting to convey the properties as aforesaid, and that said deeds be by your honorable court declared fraudulent, null, and void as against the creditors of the said John Dippold and your orators, assignees in bankruptcy of John Dippold.

Fourth. That the said Philip Fabel and Kate, his wife, should, under an order and decree of the honorable court, release and convey to your orators aforesaid any apparent title there may be in them by reason of the said deeds of January 26th, 1876, and January 22d, 1876, in order that, although the said deeds are fraudulent and void, there should be no cloud upon the title of your orators, and that they may be enabled to sell the said properties for a fair and full price.

Fifth. Such other and further relief as the circumstances of this case may require and to equity and justice may appertain.

D. T. WATSON,
J. H. McCREERY,
Solicitors for Plaintiffs.

STATE OF PENNSYLVANIA, }
Allegheny County, } *ss:*

John F. Dravo, being duly sworn, saith that the facts set forth in the foregoing bill are true and correct to the best of affiant's knowledge, information, and belief.

JOHN F. DRAVO.

Sworn — and subscribed this 13th day of June, A. D. 1879, before me—

[SEAL.] WM. S. MARKS,
Notary Public.

11 *Answers of John Dippold and Wife.*

First. John Dippold and Nannie Dippold, two of said respondents, in answer to the first, second, third, and fifth paragraphs of the bill, say that the facts stated therein are admitted.

Second. For answer to the fourth paragraph, said respondents deny all the allegations therein contained.

Third. For answer to the sixth paragraph, said respondents say that it is true that Kate Fabel is a daughter of these respondents, and that her maiden name was Kate Dippold, but that all the other facts alleged in said paragraph are denied.

Fourth. For answer to the seventh paragraph, said respondents deny all the facts therein alleged against them, and for further answer in this behalf say that said deeds were made and executed by these respondents and were by them delivered at the time they respectively bear date.

Fifth. For answer to the first clause of the eighth paragraph, said respondents deny that "said deeds and conveyances were made as a means and contrivance between the said Philip Fabel and Kate, his wife, and the said John Dippold and other persons to your orators unknown, by means and by reason whereof the said properties of the said John Dippold were to be in such condition as to the title thereof that if at any time the said John Dippold should become seriously and financially embarrassed it might be made to seem that John Dippold was not the owner of said properties;" and, for answer to the latter clause of said paragraph, said respondents say that it is true "that the said John Dippold was largely engaged in business and continued so to be engaged in business until the date of his petition in bankruptcy," but deny "that during all that time he was borrowing large sums of money and did combine with the other respondents and conspired to the effect that it should be believed by the public generally and by creditors dealing with said re-
12 spondents that he was the owner of the said properties, and by reason and by means thereof the said creditors would be and were induced to trust and confide in the financial responsibility of the said John Dippold."

Sixth. For answer to the ninth paragraph, respondents deny that the said deeds are fraudulent and void against said complainants and the creditors of these respondents, as is averred in said paragraph; and, for further answer in this behalf, say that they sold and conveyed the properties to the said Philip Fabel and Kate Fabel, his wife, at the times the said deeds respectively bear date; that said deeds were duly delivered at the time they bear date, and that the considerations therein mentioned were paid by the parties therein to the said John Dippold in money, and that said sale was a *bona fide* transaction.

Seventh. Respondents thereupon deny that complainants are en-

titled to the relief asked, and pray that their said bill may be hence dismissed with costs, &c.

JOHN DIPPOLD.
NANNIE DIPPOLD.

WEIR & GIBSON,
Solicitors for Respondents.

ALLEGHENY COUNTY, *ss:*

Before the subscriber personally came John Dippold and Nannie Dippold, the above-named respondents, who, after being sworn, did depose and say that the facts stated in the foregoing answers are true to the best of their knowledge and belief.

JOHN DIPPOLD.
NANNIE DIPPOLD.

Sworn to and subscribed by and before me this 23d day of September, 1878.

[SEAL.] E. T. CASSIDY,
Notary Public.

13 *Answer of Philip Fabel and Wife.*

First. Philip Fabel and Kate Fabel, his wife, two of the said respondents, for answer to the first, second, third, and fifth paragraphs of the bill, say that they believe that the averments therein contained are true.

Second. Said respondents, for answer to the fourth paragraph, say that the averments of facts contained therein are denied.

Third. For answer to the sixth paragraph, said respondents say that it is true that the said Kate Fabel is a daughter of the said John Dippold, and that her maiden name was Kate Dippold; but they deny all the other allegations contained in said paragraph.

Fourth. Said respondents, for answer to the seventh paragraph, say that the allegations therein contained are denied.

Fifth. Said respondents, for answer to the first clause of the eighth paragraph, say that the allegations "that the said deed and conveyances were a means and contrivance between the said Philip Fabel and Kate, his wife, and the said John Dippold and other persons to your orators unknown, by means and by reason whereof the said properties of the said John Dippold were to be in such condition as to the title thereof that if at any time the said John Dippold should become seriously and financially embarrassed it might be made to seem that said John Dippold was not the owner of said properties" are denied.

For answer to the latter clause of the eight paragraph, respondents say that it is true "that in January, 1876, the said John Dippold, as a member of the firm of John Dippold & Sons, was largely engaged in business, and continued to be largely engaged in business until the firm of John Dippold & Sons filed their petition in bankruptcy," but whether he was borrowing large sums of money down

to the date of his petition in bankruptcy these respondents do not know and therefore do not admit; but, for further answer in
14 this behalf, respondents emphatically deny that "during all of said time the said respondents and the said John Dippold did combine and agree and conspire to the effect that it should be believed by the public generally and by creditors dealing with the said John Dippold that the said John Dippold was the owner of the said properties, and by reason and by means thereof the said creditors would be and were induced to trust and confide in the financial responsibility of the said John Dippold."

Sixth. For answer to the ninth paragraph, respondents deny that said deeds are fraudulent and void as against the said complainants and the creditors of the said John Dippold, as charged in said paragraph; and, for further answer in this behalf, say that the purchases of said properties was a *bona fide* transaction; that they paid a fair and reasonable price; that said deeds were made, executed, and delivered at the time they respectively bear date, and the considerations mentioned therein represent the correct price, and that said considerations were paid in money.

Seventh. Respondents, further answering, deny that the complainants are entitled to the relief prayed for, and thereupon pray the court to dismiss the bill at the costs of said complainants, &c.

PHILIP FABEL.

WIER & GIBSON,
Solicitors for Respondents.

STATE OF KENTUCKY, } ss:
Jefferson County, }

Before the subscriber personally came Philip Fabel, who, after being duly sworn, say- that the facts stated in the foregoing answers are true to the best of their [his] knowledge and belief.

Sworn and subscribed before me September 23, 1879.
[SEAL.] J. SPEED PEAY,
Notary Public.

15 *Replication.*

And now, September 26th, 1879, the complainants join issue on the matters alleged in the answers.

D. T. WATSON,
For Complainants.

16 *Opinion of the Court.*

ACHESON, *D. J.:*

The purpose of this suit is to set aside two deeds of conveyance from John Dippold and wife to Philip Fabel and Kate Fabel (*née* Dippold and daughter of the grantors), his wife, one dated January 22d, 1876, for a tract of about eleven acres of land, reciting a con-

sideration of ten thousand dollars, the other dated January 26th, 1876, for a tract of two hundred and thirty-seven and three-fourths acres of land, reciting a consideration of eighteen thousand dollars, all situated in Beaver county, Pennsylvania.

Both deeds purport to have been acknowledged January 26, 1876, but they were not recorded until February 16, 1878.

On March 1st, 1878, John Dippold and his copartners in the firm of John Dippold & Sons were adjudged bankrupts upon a petition filed February 28th, 1878. The plaintiffs are the assignees in bankruptcy of John Dippold, and they attack said deeds for actual fraud, the bill charging that they were made with the intent and purpose of delaying, hindering, and defrauding the creditors of John Dippold and in pursuance of a fraudulent conspiracy between Dippold and Philip Fabel and Kate, his wife (who were without the means to purchase said lands), and other persons to the plaintiffs unknown. The defendants in this suit are Philip Fabel and Kate, his wife, and John Dippold and Nannie, his wife.

The answers are responsive to the bill and deny all its allegations of fraud and conspiracy.

The plaintiffs called and examined Philip Fabel and John Dippold "as if under cross-examination," pursuant to the Pennsylvania practice, and they subsequently introduced evidence tending to contradict them. To this mode of procedure no objection was taken before the examiner, but at the final hearing the defendants' counsel objected to the whole of this evidence and claimed that the bill must be dismissed for want of proof to overthrow the answers.

The evidence, however, was read subject to the objections, and the questions thereby raised were reserved.

These objections are—

First. That the Pennsylvania statute providing for the examination of the opposite party "as if under cross-examination" is
17 not applicable to a suit in equity in a court of the United States.

Second. That it was not competent to call Philip Fabel and John Dippold to testify against their wives.

First. The first objection is well taken, and sustained by a recent decision of the United States circuit court for this district, in Pennsylvania R. R. Co. *et al. vs.* The Allegheny Valley R. R. Co. *et al.*, but it does not follow that the testimony is to be rejected altogether. Under section 858 of the United States Revised Statutes the parties to a suit are admissible to testify for themselves and compellable to testify for the others. Texas *vs.* Chiles, 21 Wal., 488.

Now, to sustain an objection to the mode of conducting an examination which was not raised before the examiner would take the plaintiffs by surprise. The testimony of Fabel and Dippold, therefore, must be received and such effect given to it as if they had been called generally by the plaintiffs, unless there is something in the second objection.

Second. Whether, in view of the Pennsylvania rule, which forbids husband and wife to testify against each other, either can testify against the other in a court of the United States sitting in this State,

need not be determined here. Mrs. Dippold has no pecuniary interest whatever (so far as appears) in this suit, and she is an unnecessary and improper party. Then, as to Mrs. Fabel, while it may be that the testimony of her husband could not be used to her prejudice, certainly he is a competent witness as against himself, and his interest here is separable from hers. These objections, then, being overruled, we are brought to a consideration of the evidence.

In the year 1876, and for some time prior, John Dippold & Sons were engaged in steamboating and in merchandising coal. Their business headquarters were at Pittsburgh, but they transacted some business in the same firm name at Louisville, Kentucky. John Dippold resided in Beaver county, Pennsylvania, on the lands now in dispute. Philip Fabel is the son of Frederick Fabel, who died in July, 1878, before this suit was brought. Frederick Fabel carried on the manufactory and business of a chandler in Louisville. He was prosperous and a man of considerable means. It does not very clearly appear what estate he left at his death, but probably it was at least one hundred thousand dollars.

Philip had been in his father's employ as book-keeper and clerk at a yearly salary of twelve hundred dollars.

The relations, business and otherwise, between the son and father were confidential and close. The son married Kate Dippold in March, 1874.

18 Philip Fabel and John Dippold both testify that after this marriage Dippold, whose business frequently called him to Louisville, borrowed from Philip Fabel, from time to time, various sums of money, many of which loans were repaid, but not all, so that in January, 1876, Dippold owed on these loans ten thousand dollars. At that time (they say) Dippold applied for a further loan of ten thousand dollars, but Philip refused unless he was secured; that after some negotiations it was finally agreed that Dippold should sell and convey his real estate in Beaver county, Pennsylvania to Philip for twenty-eight thousand dollars, the sum it had originally cost Dippold and, it would seem, its then fair value. Philip, in addition to the ten thousand dollars already loaned, — to pay Dippold ten thousand dollars in cash and to give his notes for the other eight thousand dollars. Philip (they state) then came to Pittsburgh, and the parties met at the house of J. Sharp McDonald, at Sewickley, where the transaction was consummated, Philip paying to Dippold ten thousand dollars in cash and giving his four notes at four, six, eight, and twelve months, aggregating eight thousand dollars, and receiving the two deeds already mentioned. They testify that a short time afterwards Philip wrote a letter in his father's name to Dippold that he would discount the notes, and thereupon Dippold brought them to Louisville, to Fabel's place of business, and Dippold was paid seven thousand six hundred dollars for the notes. This is the substance of the testimony of Philip Fabel and John Dippold touching the main transaction.

Philip further testifies that all this money he received from his father, and that it came in the first instance out of his business. He states, however, that when he took money out of the safe to loan

to Dippold he made a loose temporary memorandum until his father replaced it, and no entries were made on the books. Speaking on this subject, he says: "When I told him that I had loaned the money, he sold some stocks or something and replaced it. That was the case in every instance of these loans.

"I reported to my father in each separate instance. I don't know how he replaced it, unless he sold stocks. He would replace the money I would report to him. I was the financial son, and what I did was regarded by him as correct."

Philip further testifies that his father told him it was his purpose to keep an account against each child of what he or she got, so that after his death one would not get more than another; but no such an account had been found, and that none of the transactions between himself and John Dippold were entered on the books connected with his father's business. He also states that he took no notes or writings evidencing the loans. He says that the money he paid Dippold at Sewickley, and which he carried there in his satchel, was in large bills—five or six one-thousand-dollar
19 bills and the rest in bills of five hundred dollars—and that these bills he procured at Louisville, in exchange for smaller currency, through one J. William Anderson, a broker, who left Louisville and went to Europe a few months afterward. Philip testifies that he took his deeds to Louisville, and there kept them until December, 1877, when he sent them to J. Sharp McDonald to have them recorded.

The defendants' counsel contend that as this testimony comes from witnesses called by the plaintiffs they are concluded thereby and its truth cannot be questioned by them.

But to such proposition I cannot assent. Where a party is called by the opposite party he stands in a different position from an ordinary witness. He is necessarily hostile to the party calling him, who is not bound by what he testifies. Wharton on Evidence, pars. 484 and 489.

It may be that he cannot be directly impeached by the party who called him, but he may be freely contradicted, even though this may incidentally discredit him; but while this is so, on the other hand a party who has voluntarily put his adversary on the witness stand cannot insist that his testimony shall be ignored if it happens to disappoint him. It is competent testimony in the case, and unless self-contradictory or inherently improbable it must prevail in the absence of countervailing evidence. Keeping in mind these principles, let us proceed to consider the evidence—which in the main is circumstantial—relied on by the plaintiffs.

It appears that in January, 1876, John Dippold & Sons were largely indebted. Their then principal creditor was the Tradesmen's National Bank of Pittsburgh, which held fifty-one thousand dollars of their paper. About twenty-six thousand of this debt still remained unpaid when the firm went into bankruptcy, the reduction being accounted for otherwise than by money received from Fabel. It is shown that there was no change in the possession of the lands in question, John Dippold remaining in possession after the con-

veyances the same as before. There is evidence that in a conversation with F. H. Anderson, two or three months before his bankruptcy, John Dippold spoke of these lands as his, and that in January, 1878, upon the renewal of a note, he expressly stated to Cyrus Clarke, Jr., the cashier of said bank, that the property was all in his name, except a little piece that had some defect in the title, which was in his wife's name, and there was nothing against it. The plaintiffs also show that the name of J. William Anderson was not in the directories of the city of Louisville, and they examined several witnesses who would be likely to know such a broker, who testified that they had never heard of such a person. Upon this evidence, in connection with the relationship between the parties, the fact of conveyances to the grantor's daughter jointly with her husband, the secrecy of the transaction, and the retention of the deeds from record until the very eve of the proceedings in bankruptcy, the unusual incidents detailed by the parties—such as the use of cash in every instance instead of checks—the bringing of ten thousand dollars to Pittsburgh in a satchel, and the absence of all entries in Frederick Fabel's books, the omission to have the title to the land examined or to take professional advice, the failure to account specifically with [for] what was done with the money—John Dippold merely stating that he used it in his business and to lift notes without being able to particularize—and upon the extraordinary character of the transaction generally, the plaintiffs rely as overthrowing the testimony of Fabel and Dippold that the consideration moneys named in the deeds were actually paid and as impeaching the *bona fides* of the conveyances.

Certainly the case is an uncommon one, and it must be conceded that it is attended by some circumstances tending to excite suspicion as to the integrity of the transaction.

Nevertheless, human affairs are so diverse and their phases oftentimes so strange, the actions of mankind frequently are so unaccountable, that we might well pause before rejecting the positive testimony of the plaintiffs' two chief witnesses, even if they stood uncorroborated.

That Frederick Fabel had the pecuniary ability to make the alleged advances to his son Philip, if he saw fit to do so, is plain enough, I think, upon the plaintiffs' own showing. His business methods connected with this matter, as indicated by the son's testimony, may appear odd, but we should not be too hasty in drawing conclusions therefrom, in view of the glimpse into his character afforded by what the plaintiffs' witness, Jacob Kriegar, incidentally remarks.

Speaking of the elder Fabel he says: "But some old Germans keep their private matters very close, especially their money matters—so strictly private that it is very hard even for a sharp business man to learn much about them."

Again, the very relationship subsisting between John Dippold and Philip Fabel might beget in the latter such confidence in the former as to account satisfactorily for conduct on the part of Philip which, in the case of strangers—dealing naturally at arm's length—would be scarcely reconcilable with good faith. Beyond the fact of the indebtedness of John Dippold & Sons in January, 1876, and

their failure some two years later, we have little evidence as to their financial condition at the earlier date. The books of the firm were not offered in evidence before the examiner nor exhibited to the court and they are not in the case; but if financial embarrassment in January, 1876, can be inferred from the proofs, it must be still said that there is not a particle of direct evidence that Philip Fabel was aware of the fact, at least apart from his knowledge that Dippold was a borrower of money. Philip's own testimony is that he knew nothing about Dippold's affairs, and he lived, it must be remembered, five hundred miles from Pittsburgh. Upon the
21 plaintiffs' proofs it would be a strained inference that John Dippold was contemplating bankruptcy in 1876. Indeed, Mr. Clarke's testimony rather suggests that he was then vigorously and hopefully attempting to extricate his firm from debt. Can it be thought surprising that he should seek pecuniary aid from the Fabels?

The retention of possession so much insisted on as a badge of fraud might well be accounted for on the score of kindly feelings cherished by young Fabel towards his wife's aged parents, even if it were not shown to be consistent with an agreement testified to by John Dippold and J. Sharp McDonald. They state that at Dippold's request Philip Fabel agreed to resell him the lands at the price of twenty-eight thousand dollars, with interest, if paid within two years, and that a few words to that effect were written on a slip of paper and signed by Philip and given to Dippold, who says that he has lost it. It may be proper to say just here that about this particular matter Fabel (who was the first witness examined) was not interrogated at all, and he did not mention it. How Kate Fabel's name came to be inserted in the deeds as one of the grantees is an unexplained circumstance. It seems not to have attracted the special notice of counsel on either side during the taking of the testimony, for no witness was asked in respect to it.

That her name should go in the deeds was no part of the prior arrangement as testified to. The deeds were not drawn by a lawyer, but J. Sharp McDonald took Dippold's old deeds and therefrom had young Jacob Dippold prepare the deeds to Fabel, using the ordinary printed blank forms.

It is possible that Jacob ignorantly supposed that the name of the grantee's wife should be inserted. Philip Fabel, to the inquiry whether he asked why the deeds bore different dates, responded, "I never mentioned it at all. I said nothing. I had Sharp McDonald's word that it was all right, and took my deeds and paid out my money." It would seem, then, that Philip made no very close scrutiny of the deeds. However, as the matter has been left, whether the wife was made a grantee by a mistake of the scrivener or by direction of Philip Fabel is a point about which we can only conjecture. And now as to the recording of the deeds. Under the laws of Pennsylvania a deed takes full effect by mere delivery, and as against the grantor and one in the situation of a subsequent assignee in bankruptcy, it is immaterial whether it is recorded or not. Mellon's appeal, 32 Pa. St., 121; Curry *vs.* McCaully, 11 Fed.

Rep., 365; S. C., 20 Fed. Rep., 583. Here there is no evidence whatever of any agreement or understanding that the deeds should be withheld from record. That they were not recorded as early as December, 1877, was the fault of McDonald, and if John Dippold made the alleged misrepresentations to Anderson and Clarke,
22 it was not in the presence of Philip Fabel. In fine, the circumstances most insisted on as overcoming the oaths of Fabel and Dippold are so equivocal and of such doubtful significance that it would be unsafe, it seems to me, to decree the deeds to be void for the alleged fraud, did the case rest upon the plaintiffs' proofs only.

But the case does not so stand. The defendants have introduced testimony of the utmost importance and value to them. In the first place, the testimony of Frank W. Smith, the notary public, puts it beyond any question that the deeds were in fact executed more than two years before the bankruptcy, on the date set forth in the acknowledgments, January 26th, 1876; and then J. Sharp McDonald testifies that shortly prior to that date, at the instance of John Dippold and in his behalf he visited Louisville and concluded the negotiation with Philip Fabel for the sale of the lands to him upon the aforesaid terms. He then understood from both Dippold and Fabel that the former owed the latter ten thousand dollars for monies loaned. The bargain being finally agreed on, McDonald returned to Pittsburgh and reported to Dippold, and the deeds were prepared and executed in anticipation of Fabel's arrival. The transaction was closed in McDonald's house and in his presence. He drew the notes for eight thousand dollars and saw Fabel make the cash payment of ten thousand dollars and give his notes to Dippold, and the deeds delivered to Fabel.

True, McDonald states that he did not count the money, but he saw Dippold count it, and he is morally certain that the amount was ten thousand dollars. McDonald's first wife, who was dead at this time, was a daughter of John Dippold, and at a later date he became a partner with Dippold in the firm of Dippold and McDonald; but these facts do not tend to his discredit. He has no apparent interest in this case, and there is no discernible reason for his swearing falsely. I have attentively looked into the evidence and am unable to discover a substantial basis for the theory that McDonald himself was a party to the alleged conspiracy. There is still less ground for the hypothesis that he was hoodwinked. And accepting ,as I think we must, his narrative as true, it is strongly confirmatory of the testimony of Fabel and Dippold, and goes far to sustain the conveyances in question.

It may be that I have failed to mention some matters which impressed the learned counsel for the plaintiffs more than they have me, but this opinion has grown to such length that I must forbear further discussion. And I can only add that a careful study of the whole case has brought me to the fixed conclusion that the clear weight of the evidence is on the side of the defence, and that the bill should be dismissed.

Let a decree be drawn dismissing the bill with costs, to be paid out of the estate in bankruptcy.

23 *Decree.*

And now, August 28th, 1885, this case having come on for final hearing, and having been argued by counsel on both sides, the court, upon consideration of the bill, answers, and proofs, do order, adjudge, and decree that the bill be dismissed, and that the costs be paid by the complainants out of the bankrupt assets of John Dippold & Sons which have or may come into the hands of the said complainants.

BY THE COURT.

24 *Exceptions of Appellants.*

And now, September, 1885, come the plaintiffs, by their counsel, and to the decree and opinion of the court filed in this cause they except, and for cause of exceptions specify—

First. The learned court erred in decreeing that the bill be dismissed.

Second. The learned court erred in holding that the defendant could not be called, as for cross-examination, under the Pennsylvania statutes.

Third. The learned court erred in holding that the evidence was insufficient to decree that the deeds in this case were fraudulent and void as against creditors.

Fourth. The learned court erred in not holding that the evidence disclosed such badges of fraud on the part of the respondents as follows, to wit:

(*a.*) Indebtedness of grantor at time of making deed.

(*b.*) Possession of the land after the conveyances.

(*c.*) Failure of grantees to record the conveyances until a few days before bankruptcy of grantor.

(*d.*) Conveying to Fabel and his wife (grantor's daughter) jointly, when the consideration is alleged to have moved from Fabel's father.

(*e.*) Grantor's declarations, long after the date of deeds, that the land was his and unencumbered.

(*f.*) Alleged payments of more than twenty-eight thousand dollars, at sundry times, by grantee to grantor, and borrowing of more than ten thousand dollars by grantor of grantee, at sundry times, without making any written evidence of either the indebtedness or the payments.

(*g.*) Purchase of land requiring the outlay of twenty-eight thousand dollars on part of grantee without professional advice or examination of title.

25 (*h.*) Grantees sending unrecorded deeds by unregistered letter.

(*i.*) Procuring a broker by grantee to exchange ten thousand dollars — small bills for large ones, then carrying the latter in a traveling satchel from Louisville to Sewickley to pay them to grantor

when both parties were accustomed to transact business with others by bank checks and drafts.

(*j.*) Extraordinary allegation on part of grantee as to the manner of procuring the money which he alleges he paid grantor for the deeds.

(*k.*) Grantor's failure to account for the disposition of the alleged purchase-money, as shifted the burden of proof upon the respondents and required them clearly and fully to explain the said *indicia* of fraud, and in the absence of such explanation required the cancellation of the said deeds as fraudulent against creditors.

Fifth. The learned court erred in according any weight to the evidence of the respondents in their own favor, because the testimony discloses that they were untruthful and unworthy of belief.

Sixth. The learned court erred in holding that J. Sharp McDonald was a disinterested witness, because, if truthful, his evidence discloses that he had been negligent about the recording of the deeds, and, if overthrown on that ground, he would have been liable.

Seventh. The learned court erred in not making a decree in favor of the plaintiffs, and in not ordering that the deeds be delivered up to be cancelled.

D. T. WATSON,
J. H. McCREERY,
WILLIAM S. PIER,
Counsel for Complainants.

26 *Petition for Leave to Appeal.*

Filed September 29, 1885.

To the honorable the judge of the said court:

Your petitioners, the plaintiffs above named, respectfully sheweth to your honor that on the 28th day of August, 1885, a final decree was entered in the above-named case dismissing the bill against the said defendants, and that the costs be paid by the complainants out of the said bankrupts' estate, and that on the 10th day of September instant the said complainants filed specifications of exception to said decree in the court, setting out therein the grounds and reasons wherein said decree is erroneous in petitioners' belief and opinion. They therefore pray this honorable court to order and direct that petitioners have leave to appeal from said decree of this honorable court to the circuit court of the United States for the western district of Pennsylvania.

And they will ever pray, &c.

JOHN F. DRAVO,
ROBERT ARTHURS,
Assignees in Bankruptcy of John Dippold.

STATE OF PENNSYLVANIA, } ss:
County of Allegheny, }

Before me, clerk of the district court of the United States for the western district of Pennsylvania, personally came John F. Dravo, who, being first duly sworn, says that the facts set forth in the within petition are true.

JOHN F. DRAVO.

Sworn — and subscribed this 28th day of September, A. D. 1885.
S. C. McCANDLESS, *Clerk.*

Order of Court on Appeal.

And now, 29th September, 1885, the within petition presented in open court, and, upon consideration thereof, leave is granted to the petitioners to remove the said cause by appeal into the circuit court of the United States for the western district of Pennsylvania.

BY THE COURT.

27 *Bond for Damages and Costs on Appeal.*

Filed Sept. 29th, 1885.

Know all men by these presents that we, John F. Dravo and Robert Arthurs, assignees of John Dippold, and William Vankirk and L. Halsey Williams, of the county of Allegheny and State of Pennsylvania, are held and firmly bound unto Philip Fable and John Dippold in the full and just sum of two hundred dollars, current money of the United States of America, to be paid to the said Philip Fable *et al.*, his [their] heirs, executors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of September, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately, at the district court of the United States for the western district of Pennsylvania, in a suit depending in said court between John F. Dravo and Robert Arthurs, assignees, &c., and Philip Fable *et al.*, at number 4, October term, 1879, in equity, a decree was rendered against the said complainants, and the said complainants having obtained leave to remove the said cause to the circuit court of the United States for the western district of Pennsylvania and filed a transcript of the record of said court in the office of the clerk of the said circuit court of the United States to reverse the decree in the aforesaid suit:

Now, the condition of this obligation is such that if the said obligor shall well and truly pay or cause to be paid to the said Philip Fable *et al.*, his [their] heirs, executors, administrators, or assigns, all such damages and costs as shall accrue to him [them], the said Philip Fable *et al.*, defendants in said cause, as aforesaid, in the prosecution of the

said ——, then this obligation to be void; otherwise to remain in full force and virtue.

JOHN F. DRAVO, [SEAL.]
ROBERT ARTHURS, [SEAL.]
Assingees in Bankruptcy of John Dippold.
W. VANKIRK. [SEAL.]
L. H. WILLIAMS. [SEAL.]

Sealed and delivered in presence of—
—— ——.

28 *Subpœna.*

Filed June 17, 1879.

UNITED STATES OF AMERICA, } *ss:*
Western District of Pennsylvania, }

The President of the United States to Philip Fable and Kate Fable, his wife, John Dippold and Nannie Dippold, his wife:

For certain causes offered before the district court of the United States in and for the western district of Pennsylvania, in the bill in equity of John F. Dravo and Robert Arthurs, assignees in bankruptcy of John Dippold, John H. Dippold, Martin Dippold, and Jacob H. Dippold, partners as John Dippold & Sons, bankrupts—

We command and strictly enjoin you that, laying aside all other matters and notwithstanding any excuse, you personally be and appear before the judge of the said court, at the session of the same court to be holden at Pittsburgh, on the first Monday of July next, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf; and this you are in nowise to omit, under the penalty of ten thousand dollars.

Witness the Honorable W. W. Ketcham, judge of the said court, and the seal thereof, at Pittsburgh, this 13th day of June, A. D. 1879, and of the Independence of the United States the 103d year.

S. C. McCANDLESS, *Clerk.*

The defendants are required to enter appearance in this suit on or before the return day of this writ; otherwise the bill may be taken *pro confesso.*

June 17, 1879, service of this subpœna accepted by direction of respondents.

WEIR & GIBSON,
Solicitors for Respondents.

Order Extending Time for Filing Answer.

Filed August 19, 1879.

And now, August 19, 1879, on motion of Weir & Gibson, solicitors

for respondents, the time for filing answers is extended for the period of fifteen days from this date.

PER CURIAM.

29 *Order Granting Extension of 15 Days for Respondent to File Answers.*

Filed Sept. 5, 1879.

And now, to wit, September 5, 1879, on motion of Weir & Gibson, attorneys for respondents, a further extension of 15 days is given to respondents to file their answers.

PER CURIAM.

Notice of Motion to Set Aside Order.

Filed Sept. 6, 1879.

You will please take notice that at 2 p. m. of Saturday, September 6th, 1879 (this day), I shall move the court at chambers to set aside the order of September 5th, 1879, extending time for filing answers.

Sept. 6th, 1879.

D. T. WATSON,
Attorney for Plaintiffs.

To Messrs. Weir & Gibson, attorneys for defendants.

Notice of Oct. 2, 1879.

Filed Oct. 2, 1879.

You will please take notice that the plaintiffs desire the evidence to be adduced in this cause to be taken orally, and this morning I shall move for the appointment of an examiner.

Oct. 2d, 1879.

D. T. WATSON,
Of Counsel for Plaintiffs.

30 *Affidavit and Order Appointing J. H. Reed Examiner.*

Filed October 2, 1879.

And now, October 2, 1879, the court, on motion of plaintiffs' counsel, do appoint James H. Reed, Esq., an examiner in this case, and do direct him to take, at Louisville, Ky., beginning October 13th, 1879, the testimony of such witnesses as may be produced.

PER CURIAM.

Personally before me came Robert Arthurs, one of the plaintiffs, who, being by me duly sworn, says that it is necessary to the plaintiffs' case that a number of witnesses residing in Louisville and ad-

jacent thereto shall be examined; that it is impossible to procure the attendance of these witnesses at Pittsburgh, and it is not practicable to take their testimony on commission; that some of the witnesses are infirm and aged, and affiant is fearful, unless promptly proceeded with, they may lose their evidence.

ROBERT ARTHURS.

Sworn to and subscribed this October 2d, 1879, *coram*—
S. C. McCANDLESS,
Clerk U. S. District Court.

And now, Oct. 4, 1879, William Scott, Esq., is substituted in place of J. H. Reed, Esq., as examiner in this case, the notices heretofore served by J. H. Reed to be taken as served by the examiner hereby appointed.

PER CURIAM.

Præcipe for Appearance.

Filed October 4, 1879.

At Pittsburgh, in said district, on the 4th day of October, 1879.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

To S. C. McCandless, Esq.:

Please enter our appearance in above case for Philip Fable and wife, defendants.

KNOX & REED.

31 *Bill of Expenses of Examiner Taking Testimony at Louisville.*

Filed November 11, 1879.

Statement of expenses of examiner appointed by the court, in going to Louisville, Ky., taking testimony October 13–16, 1879, and returning,

R. R. tickets, both ways	$28 00
Sleeping cars, both ways	4 50
Meals, both ways	3 00
Costs in attachment	6 80
Witness fees	10 50
Hotel bill at Louisville	12 50
Incidentals	3 00
Total	$68 30

Above expenses were paid by Mr. Robert Arthurs, of complainants.

WILLIAM SCOTT, *Examiner.*

WESTERN DISTRICT PENNSYLVANIA:

Before me came William Scott, above named, who, being duly sworn, deposeth and saith that his expenses in the matter above named were paid by complainants, and that the items and amounts above set forth are correct to the best of his knowledge and belief.

WILLIAM SCOTT.

Sworn — and subscribed before me this 11th of November, 1879.

S. C. McCANDLESS, *Clerk.*

Rule on Respondents to Close Their Testimony.

Filed November 15, 1880.

And now, November 15th, 1880, upon motion of solicitors for complainants, the court grant a rule upon the respondents to close their testimony within thirty days after notice of this rule served upon them.

BY THE COURT.

32 *Order for Extending Time for Taking Defendants' Testimony and Notice of Application Therefor.*

Filed Jan. 5, 1881.

And now, January 5, 1881, on motion of Knox & Reed, of counsel for defendants, the time for taking defendants' testimony is extended until February 15th, 1881.

BY THE COURT.

To D. T. Watson, Esq., of counsel for plaintiffs:

Please take notice that an application will be made to the judge of the U. S. district court for an extension of time to take defendants' testimony in the above case until February 15, 1881. Said application will be made January 5th, 1881, at 10 a. m., or as soon thereafter as it can be heard.

KNOX & REED,
For Defendants.

Service of above notice accepted.

D. T. WATSON,
For Plaintiffs.

Rule on Examiner.

Filed June 6th, 1882.

And now, June 6th, 1882, it appearing to the court that testimony in this case has been taken before William Scott, Esq., examiner, and that on November 15th, 1880, a rule was granted at the instance of solicitors for plaintiffs on respondents to close their

testimony within thirty days after service, and that on January 5th, 1881, at the instance of solicitors for respondents, the time for taking testimony was extended to the 15th prox., and on motion of D. T. Watson and S. W. Cunningham, of counsel for plaintiffs, a rule is now granted upon William Scott, Esq, examiner, to show cause why the said testimony taken before him should not be filed. Returnable June 10th, 1882, at 10 o'clock a. m.

BY THE COURT.

33 *Rule on Commissioner to Return Testimony.*

Filed July 29th, 1884.

And now, July 29th, 1884, on motion of H. W. Weir, attorney for defendants, rule granted upon William Scott, Esq., to show cause why he should not file the testimony taken before him in this case.

BY THE COURT.

Answer of W. Scott, Examiner, to the Rule of July 29, 1884.

Filed August 6, 1884.

To the Honorable M. W. Acheson, judge of said court:

William Scott, the examiner appointed by the court in the above-entitled case, respectfully makes answer to the rule granted July 29, 1884, upon motion of counsel for the defendants requiring him to show cause why the testimony taken before him in this case should not be filed.

The examiner is now, and has at all times heretofore been, ready and willing to file the testimony taken before him in this case whenever instructed by the court or requested by the parties so to do.

He has now in his possession a portion of said testimony, but a portion thereof is not in his possession, nor does he know its whereabouts. The missing portion is that taken before the examiner at Louisville, in October, 1879, and hereinafter spoken of as the "Louisville testimony," not meaning, however, to include within that term the depositions taken by consent, in the spring of 1880, at Louisville.

The attention of the examiner is now called to the fact that a rule similar to the present one was granted, on motion of the plaintiffs, June 6, 1882, and still stands without answer thereto or decision thereon.

Wishing to relieve himself from any appearance of neglect of duty or of disrespect to the court, the examiner begs leave to state the facts connected with both of these rules.

Your respondent was appointed examiner by order of the court made October 4, 1879, and, proceeding at once to Louisville, took there the testimony offered by the plaintiffs and, as soon as possible after his return to Pittsburgh, filed the same in the office of the clerk of the court.

34 This was done under a misapprehension of the order of the court, the examiner supposing, until after he had filed

this testimony, that his duties were completed upon taking the testimony at Louisville.

The testimony so filed is that which is now missing.

It seems to have been taken from the clerk's office under leave of court by counsel for plaintiffs, November 1, 1879, and since it was first filed it has never been in the possession or custody of the examiner, except for a few days, from June 27th to July 12th, 1882, as hereinafter explained.

The taking of the testimony before the examiner proceeded in Pittsburgh, and on May 31st, 1880, the complainants rested. No testimony was offered at once by the defendants.

During the latter part of 1880 and the early part of 1881, counsel for the complainants notified the examiner that the time allowed defendants under rule to close had expired, and requested the examiner to file the testimony taken before him in Pittsburgh, but he was unable to comply with their request, for the reason that this testimony was in possession of counsel for the defendants, who had procured it from the examiner to prepare for the introduction of their testimony, and from whom the examiner, after repeated efforts, was unable to obtain it.

To bring the question before the court, counsel for plaintiffs having asked and obtained the consent of the examiner, made the motion for and obtained the rule of June 6, 1882. Upon service of that rule, however, the Pittsburgh testimony was returned to the examiner, and he was notified that, by consent of the parties, he was to take the testimony of the defendants, notwithstanding the rule to close above mentioned.

Meetings were held, accordingly, June 25, 26, and 27, 1882, at which the defendants produced their testimony, closing at the meeting on June 27, and there was then an adjournment, with the understanding that the testimony was closed, unless the plaintiffs, after consideration, should wish to offer testimony in rebuttal.

In view, however, of the possibility that all the testimony was to be filed shortly thereafter, the examiner took from this meeting all the testimony previously in his possession, and also the "Louisville testimony," which had not previously been in his possession since its filing, but which was produced at the hearing by counsel and used for reference.

All this testimony is still in the possession of the examiner, except the "Louisville testimony." On July 12th, 1882, counsel for plaintiffs sent for and obtained the "Louisville testimony," stating by the messenger that an examination of it was necessary to enable the plaintiffs to determine whether they had anything more to offer.

The examiner was never afterwards requested to call a meeting for hearing further testimony, and since July 12th, 1882, he has not seen the said "Louisville testimony," nor has he been able, since inquiry was recently made concerning it, to ascertain its whereabouts, although he has made diligent efforts to do so.

WILLIAM SCOTT.

WESTERN DISTRICT OF PENNSYLVANIA, } ss:
Allegheny County, }

William Scott, being duly sworn, deposes that the facts set forth in the foregoing answer are true, as deponent verily believes.

WILLIAM SCOTT.

Sworn — and subscribed before me this 6th day of August, 1884.

S. C. McCANDLESS, *Clerk.*

Agreement to File Testimony, etc.

Filed April 10, 1885.

Whereas the testimony taken in this case before the examiner at Louisville, Ky., October 13, 1879, *et seq.*, has been mislaid and cannot be found; and

Whereas the said examiner has reproduced a copy of said testimony from his stenographic notes thereof; and

Whereas the testimony of the notary before whom the deeds in this case appear to have been acknowledged was not taken hitherto and the respondents' counsel desire that the same be now taken—

It is agreed by the counsel of the respective parties that the said reproduced copy of the Louisville testimony, certified by the examiner, be taken, filed, and considered in the cause for all intents and purposes as the original testimony, and that the testimony of the said notary be taken on behalf of the respondents as to the acknowledgement of said deeds forthwith, and when taken shall be considered for all intents and purposes in the case as if taken in regular time and order.

WILLIAM S. PIER,
Of Counsel for Plaintiffs.
H. W. WEIR,
Of Counsel for Defendants.

36 *Order to File Testimony Reproduced in Lieu of Original.*

Filed April 10, 1885.

And now, April 10, 1885, it appearing to the court that counsel for the respective parties have agreed that a reproduced copy of the testimony taken by the examiner in this case at Louisville, Kentucky, certified by the said examiner as such, should be filed in and considered for all purposes of the case as and for the original, and that the deposition of Frank W. Smith, taken by the defendants out of order, should be filed in and considered for all purposes of the case as if taken in order, upon motion of counsel for the complainants, it it is ordered that the said reproduced testimony, certified as such by William Scott, Esq., examiner, and the said deposition, together with the said agreement of counsel in writing, be filed in this case, the said testimony to have the same effect as the original and the

said deposition as if taken in regular order, subject to exceptions hereafter to be made as to relevancy and competency.

BY THE COURT.

Prec. for Appearance.

Filed April 10th, 1885.

S. C. McCandless, Esq., clerk:

Please enter my appearance for the complainants in this case. April 10th, 1885.

WILLIAM S. PIER.

Motion for Supplemental Order to Examine F. W. Smith.

Filed June 17th, 1885.

And now, viz., June 17th, 1885, James H. McCreery, of counsel for plaintiffs, moves the court for a supplemental order for the examination of Frank W. Smith, Esq., whose deposition is already filed in this cause.

JAMES H. McCREERY,
Counsel for Plaintiffs.

37 WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

James H. McCreery, being duly sworn according to law, saith that since the argument of the above case he has had a conversation with Frank W. Smith, who heretofore made a deposition in this case, and who deposed that he, the said Frank W. Smith, wrote said deeds, and that said Smith now acknowledges that he did not write them, but only took the acknowledgment thereof, and the affiant believes that it is material and important that such contradiction or correction be made part of the record in the case.

JAMES H. McCREERY.

Sworn and subscribed to this 17th day of June, A. D. 1885, before me—

S. C. McCANDLESS, *Clerk.*

Decree.

Filed August 28, 1885.

And now, August 28th, 1885, this cause having come on for final hearing and having been argued by counsel on both sides, the court, upon consideration of the bill, answers, and proofs, do order, adjudge, and decree that the bill be dismissed, and that the costs be paid by the complainants out of the bankrupt assets of John Dippold & Sons which have or may come into the hands of the said complainants.

BY THE COURT.

Exceptions to Decree.

Filed September 10, 1885.

And now, September —, 1885, come the plaintiffs by their counsel, and to the decree and opinion of the court filed in this case except, and for cause of exception specify:

First. The learned court erred in decreeing that the bill be dismissed.

Second. The learned court erred in holding that the de-
38 fendants could not be called as for cross-examination under the Pennsylvania statute.

Third. The learned court erred in holding that the evidence was insufficient to decree that the deeds in this case were fraudulent and void as against creditors.

Fourth. The learned court erred in not holding that the evidence disclosed such badges of fraud on the part of the respondents as follows, to wit:

(*a.*) Indebtedness of grantor at time of making deeds.

(*b.*) Possession of the land after the conveyances.

(*c.*) Failure of grantees to record the conveyances until a few days before bankruptcy of grantor.

(*d.*) Conveying to Fable and his wife (grantor's daughter) jointly when the consideration is alleged to have moved from Fable's father.

(*e.*) Grantor's declaration, long after the date of deeds, that the land was his and unincumbered.

(*f.*) Alleged payments of more than $28,000 at sundry times by grantee to grantor and borrowing of more than $1,000 by grantor of grantee at sundry times without making any written evidence of either the indebtedness or the payments.

(*g.*) Purchase of land requiring the outlay of $28,000 on part of grantee without professional advice or examination of title.

(*h.*) Grantee's sending unrecorded deeds by unregistered letter.

(*i.*) Procuring a broker by grantee to exchange $10,000 small bills for large ones, then carrying the latter in a traveling satchel from Louisville to Sewickley to pay them to grantor when both parties were accustomed to transact business with others by bank checks and drafts.

(*j.*) Extraordinary allegation on part of grantee as to the manner of procuring the money which he alleges he paid grantor for the deeds.

(*k.*) Grantee's failure to account for the disposition of the alleged purchase-money, as shifted the burden of proof upon the respondents and required them clearly and fully to explain the said *indicia* of fraud, and in the absence of such explanation required the cancellation of the said deeds as fraudulent against creditors.

Fifth. The learned court erred in according any weight to the evidence of the respondents in their own favor, because the testimony discloses that they were untruthful and unworthy of belief.

39 Sixth. The learned court erred in holding that J. Sharp McDonald was a disinterested witness, because, if truthful, his

evidence discloses that he had been negligent about the recording of the deeds, and, if overthrown, on that ground he would have been liable.

Seventh. The learned court erred in not making a decree in favor of the plaintiffs and in not ordering that the deeds be delivered up to be cancelled.

D. T. WATSON,
J. H. McCREERY,
WILLIAM S. PIER,
Counsel for Complainants.

40 *Appendix.*

U. S. District Court, Western District of Pennsylvania.

JOHN F. DRAVO and ROBERT ARTHURS, Assignees of John Dippold & Sons,
versus
PHILIP FABEL and KATE FABEL, His Wife; JOHN DIPPOLD and NANNIE DIPPOLD, His Wife.

No. 4. October, 1879.
In Equity.

And now, to wit, October 13th, 1879, the examiner appointed by the court, pursuant to notice duly served upon the parties, was in attendance at the Gault House, in the city of Louisville, for the purpose of taking the testimony in the above case. By consent of the parties the hearing was begun at 10 a. m. instead of 3 p. m.

Appearances: Mr. John Mason Browne, for the complainants; Mr. James H. Reed, for the respondents.

Counsel signed and filed with the examiner their written agreement that the testimony shall be taken in short-hand by the examiner; that the signatures of the witnesses be dispensed with, and that the testimony be subsequently written out by the examiner or under his direction.

PHILIP FABLE, one of the defendants, being called in behalf of the complainants, as under cross-examination, pursuant to the Pennsylvania statute, and being sworn and interrogated, deposed as follows:

Questions by Mr. BROWN:

Q. Are you the same Philip Fable who is a defendant to this action?

41 A. I am.

Q. The same Philip Fable who has already given a deposition in this case?

A. I am.

Q. Is your father, Frederick Fable, living or dead?

A. He is dead, I am sorry to say.

Q. When did he die?

A. The 22d or 24th of July, 1878; I don't remember now which.

Q. Did he leave a will?

A. No, sir.

Q. Has any one qualified as administrator of his estate?
A. No, sir.
Q. Has his estate ever been settled up?
A. No, sir.
Q. Has there been any division of his estate amongst the heirs or the parties entitled to receive it?
A. No, sir.
Q. What is the reason for no administration having been taken out?

Objected to by Mr. Reed as incompetent and irrelevant, this examination having nothing to do with Frederick Fable's estate.

A. The children all being of lawful age, we were willing to go ahead with the business without an administrator being appointed.
Q. Were the books closed up as of the day of Frederick Fable's death?

Objected to by Mr. Reed for the same reason.

A. They are closed overy year, every July. They had just been closed before his death, July 1st, 1878.
Q. Who kept the books at the time of Frederick Fable's death?
A. I did.
Q. Did you close the books in July, 1878?
A. I always do. I did that year. I close them every year.
Q. Did the books of Frederick Fable, at the time of his death, show an account against you or any one or more of your brothers?
A. They never showed nothing. I did not see anything.
Q. Did those books show an account against persons who were indebted to Frederick Fable?
A. Yes, sir.
Q. Did you keep those accounts?
A. I did.
Q. Did you enter a credit to Frederick Fable and a debit against yourself of the amounts that you say you paid to Dippold?
42 A. No, sir; there was no charge made of anything of that kind.
Q. Was there any memorandum in the cash book of Frederick Fable at any time of any of those sums?
A. No, sir.
Q. Was there any memorandum in the day book of any of those sums?
A. No, sir.
Q. Were any of those sums credited afterward on the journal or ledger of Frederick Fable?
A. No, sir.
Q. Is there any blotter or other memorandum on the books of Frederick Fable showing these sums paid to Dippold or any one of them?
A. No, sir.
Q. Is there any check book of Frederick Fable showing any of these sums?

A. No, sir.
Q. Are there any old checks showing these sums?
A. No, sir.
Q. Are there any transactions in any bank showing these sums?
A. No, sir.
Q. Do I correctly understand you as asserting that all these sums of money which you say you paid to Dippold were taken in cash from the safe or moneys of Frederick Fable?
A. It was his money.
Q. And for the money so taken no charge was made against you?
A. No charge was made on the books.
Q. How did you pay it to Dippold—in money? Was it not in actual currency?
A. Currency; yes, sir.
Q. How much was the smallest sum you paid him at any one time?
A. I paid him different sums, off and on. He came in and borrowed money at different times.
Q. When money came in to Frederick Fable's business or safe did you enter it on the cash book?
A. When people paid bills I did.
Q. Did you not charge cash with all money received into the business?
A. Well, all that concerned the business I always charged.
Q. Whenever any money was paid out or used out of the funds of the business did you not credit cash by it?
A. Yes, sir.
Q. Now, if you took money out of the cash that was in the safe, how did you make your account balance, unless you made an entry of that transaction?
43 A. Well, I took the money out and put a memorandum in the drawer and counted it in as cash.
Q. Then when you balanced your cash you destroyed the memorandum?
A. No. My father replaced it within a short time after; then I destroyed the memorandum.
Q. How long did you carry such memoranda in your drawer, as a general thing?
A. I guess about twenty-four hours; not longer than that; somewheres in that neighborhood.
Q. Did your father each day or within twenty-four hours of the transaction make good the amounts you had loaned to Dippold?
A. Whenever I would tell him he would always make it good.
Q. And that without any memoranda being entered on the books whatever?
A. Without any memorandum being entered.
Q. Do you recollect the date when you paid to Dippold the money which was represented by the notes which you say you discounted yourself?
A. I don't know whether it was the latter part of January or the

first part of February; around there somewheres. I couldn't tell the date exactly.

Q. Did you pay him by check or cash?

A. I think I paid it part cash, and if I am not mistaken I drew some money out of the bank.

Q. Upon whose check did you draw any money?

A. F. Fable's.

Q. Payable to whose order?

A. Cash.

Q. The checks were not made payable to your order?

A. I never do. I always make them "cash."

Q. How were those checks entered on the books of Frederick Fable?

A. They were not entered at all.

Q. Do you mean to say he checked against his bank account without making any entry or keeping any memorandum on his books to show the condition of his cash?

A. We just made a memorandum in the drawer until he replaced it again. There was none in the books.

Q. Where did you pay to Dippold the money by way of discount of those four notes of yours?

A. Down here at Louisville, at the office.

Q. Who was present when you paid it?

A. There was no one but my father present.

Q. Is it not a fact that you have already deposed that you
44 had loaned to John Dippold, in various sums, as much as ten thousand dollars, and that afterwards he wanted more money, and that you gave him ten thousand dollars more in money and eight thousand dollars in four notes, at four, six, eight, and twelve months, and discounted those notes yourself at $400?

A. Yes, sir.

Q. Is that the way you paid Dippold?

A. I gave him ten thousand dollars in 1875, as I said, off and on, and then ten thousand dollars when I got the deeds.

Q. And you also gave him some notes at the time you got the deeds?

A. Yes, sir.

Q. What were the maturities of those notes?

A. Those were the four, six, eight, and twelve months.

Q. You discounted those notes yourself?

A. Yes, sir; the discount came to $400 even, allowing some expenses.

Q. This whole amount, ten thousand dollars of old loans, ten thousand dollars new cash, eight thousand dollars in four notes, was what you paid him for this land in Baden, Beaver county, Pa.?

A. Yes, sir.

Q. That is the land in dispute in this case?

A. Yes, sir.

Q. Did you pay him anything else except this for this land?

A. No; I never paid him anything else.

Q. When you discounted the notes, you say that was at Louisville?

A. Yes, sir; my father was there. He was the only one—the only one I remember being there.

Q. Did you pay him in cash or by check?

A. I told you before—cash.

Q. Has John Dippold or Sharp McDonald or anybody else ever returned to you any part of this money that you say you paid?

A. No, sir.

Q. Do you know what John Dippold did with the money that you say you paid him?

A. No, sir; I have no idea at all.

Q. In what sums did you pay the money to Dippold—large or small bills?

A. I paid him large bills. I don't remember as to the first ten thousand, because he came and borrowed the money. As to the second ten thousand, it was either five or six one-thousand-dollar ($1,000) bills, and the balance in five-hundred-dollar ($500) bills.

Q. From whom did you get the thousand-dollar bills?

A. I had a broker at the exchange.

45 Q. What was that broker's name?

A. J. W. Anderson. J. William Anderson is all I knew him by.

Q. Where does he reside?

A. I don't know. He left here and went to Europe. He went to Europe in April or before April—the latter part of February of the same year, 1878—it might have been March. He left here a week or ten days before I went to Pittsburgh.

Q. Where did he have his office?

A. I don't know where. I would meet him on the street. He was a broker, a stock and bond broker by business, as I always thought. I think he was a married man. I don't know whether he kept house or boarded. I had known him for some time. I am a poor man at giving descriptions. I cannot say what his personal appearance was. I couldn't say whether his hair was black or red. I can't say whether he was fat or slender. I don't know what his means or circumstances were. He was a street broker, so far as I know.

Q. What brokers did he seem to associate with?

A. I never knew. I never saw him with John C. Gault, the broker, nor with Mr. Green, nor with T. & W. Mays, the brokers, nor with Brown & Coulston, the brokers, nor with McCarthy, the stock broker.

Q. Where did you first become acquainted with J. William Anderson?

A. Here in this town. I don't remember about what year. It was some time before this transaction. I could not say how many years.

Q. Do you know what part of Europe he went to?

A. I could not say. I don't know whether he went there for his health or for his country's good. He told me he was going there.

Q. You don't know that he has ever returned from Europe?

A. No, sir; I have not heard of him since he went to Europe.

Q. Where did Anderson have the money—in his pocket-book?
A. I could not say.
Q. Where did the exchange of money take place—at your office or in the street?
A. He brought it to the office when I saw him—at Frederick Fable's office.
Q. Was the money changed there in the office—small bills for big bills?
A. Yes, sir; I gave him small bills for big bills. I could not say who was there besides myself and Anderson.
Q. Did you keep the books of Frederick Fable in 1876?
A. I did.
Q. And at the time that these deeds were handed to you?
A. Yes, sir.
Q. Who kept the books when you were away—when you went to Pennsylvania?
46 A. I did; I left them lay until I came back. They made entries on slips of paper, and I entered them when I came back. The day book was not kept up when I went away. There were no entries made in the business, when I was in Pennsylvania, by anybody else. I have not got the books; I have been subpœnaed to bring them.

By Mr. REED: They will be brought.

Q. You say there was no entry by anybody else during that time?
A. There may be in the day books; there may be in the cash book, too.
Q. How long were you in Pennsylvania?

Mr. Reed enters an objection to going into testimony in regard to Frederick Fable's books as incompetent and irrelevant.

At this point it was agreed that the further taking of Mr. Fable's testimony should be suspended to allow him to go for the books which had been mentioned, but before he went the following took place:

By Mr. REED:

Q. Mr. Fable, are those books in your custody?
A. No, sir.
Q. In whose custody are the books?
A. In no one's.
Q. Who is the book-keeper on the books now?
A. I am.
Q. Are you in charge of the office?
A. Yes, sir.
Q. Where are those books?
A. We have got them stored away at the factory—at the works.
Q. How are they stored away—in boxes?
A. Yes, sir.
Q. And you are the book-keeper?

A. I am; yes, sir. I am one of the partners—now running the business.

Q. You are managing or assisting in the management of the business?

A. Yes, sir.

Q. You are getting a profit from the business when it pays anything?

A. Yes, sir.

Q. And responsible for the losses when it loses anything?

47 A. Myself and the balance are.

This witness here stands aside for the present for the purpose above mentioned.

CHARLES P. WEAVER, a witness produced by the complainants, being sworn and examined, deposed as follows:

Direct examination by Mr. BROWNE:

Q. Were you at any time in the employ of Frederick Fable?

A. Yes, sir. I could not say exactly when. I was there for seven years within a few months—up to two years ago this last September.

Q. Were you there in '75 and '76?

A. Perhaps it was three years last September since I left. I think it was only two years last September, but I am not sure I remember the month when I left. It was the first of September. I was there in the Centennial year. I can tell from the books when they are brought.

Q. Did you keep the books at all?

A. No, sir; I did at times, when Philip would be absent.

Q. Do you recollect when Philip Fable went up to Pennsylvania to buy a farm from Dippold?

A. No, sir; I was not with the firm at that time.

Q. The deeds are dated January, 1876.

A. Well, if he went up there I did not know anything about it.

Q. What business did you transact for Frederick Fable?

A. I was salesman and collector.

Q. Did you carry the bank book to and from the bank?

A. Very frequently.

Q. How were the moneys of Frederick Fable kept? Were they bulked up to an amount of thousands of dollars in the safe or were they kept in bank?

A. In bank. An account was kept at the Western Bank and the Masonic Bank and, I think, sometimes at Kreeger's Bank.

Q. Did he keep a large deposit or just a current deposit for business?

A. A current deposit. Sometimes it would amount to several thousand dollars.

Q. How much was the general cash retained at the store?

A. Well, we never held any over. It was always a point to deposit every day; that was a habit of the business.

Q. How did Fable pay debts against the concern?

48 A. By checks; that was the habit of the business. Checks were made payable to order, as a general rule. I have frequently seen that done. I never prepared any balance-sheet or trial balance of the firm's business.

Q. Did you ever know a time when there was ten thousand dollars accumulated in the safe from time to time?

A. No, sir.

Q. Did you ever know Frederick Fable to allow more than a day or two's accumulations to remain in the safe?

A. No, sir.

Q. What sort of a business man was Frederick Fable?

A. Exceedingly prudent and careful; took no risks in the way of speculation, that I know of. The only risks he took was in his legitimate business, taking his chances of being paid in sixty days. He used to tell me something of the bank stock that he had. He had investments in an Insurance Co. and in banks—Masonic Bank, German Insurance Bank, Kentucky National Bank, and may be one or two others.

Q. Where did he keep his stocks and bonds—at the store or in bank?

A. He did not keep them at the store.

Q. Do you recollect about old man Fable ever using some of his bank stock by way of hypothecation to raise money to build a house?

Objected to as incompetent and irrelevant.

A. No, sir.

Q. Do you recollect when he built a house?

A. Yes, sir.

Q. About what size or cost of house was it?

A. The house I speak of was the one upon the main street—a right nice, respectable house. I could not tell what it cost. I suppose it is an eight or ten thousand dollar house.

Q. How did he pay for that house?

A. I don't know. I have seen him pay a bricklayer. He paid him regularly whenever the bill was presented. If he had cash in the drawer he paid cash; otherwise he would pay check. Whenever the bricklayer wanted money Fable was ready to pay him.

Mr. Reed entered an objection to all of the foregoing testimony in relation to Fable's house as incompetent and irrelevant.

Q. Are you a book-keeper, Mr. Weaver?

A. Well, I have a theory of book-keeping, but I have never had much practice in it.

49 Q. Is not it a fact that if you take cash out of the safe or till of any concern and make no entry of it on the books that your books will get out of balance?

Objection by Mr. Reed because witness is not an expert.

Q. Does it need any expert, Mr. Weaver, to answer that question?

A. No, sir; not much.

Q. Whenever Philip Fable was away from home, who made entries then on the books?

A. I did—that is, when I was with them.

Q. Whilst you were with Fable, did it ever occur that Philip Fable would be away for a time?

A. Yes, sir.

Q. What was done with the books during his absence; were the entries kept on in them?

A. I kept the books up—the cash book and blotter or day book and journal, the entry book or the order book, etc.

Q. Do you know John Dippold, the father-in-law of Philip Fable?

A. I am just acquainted with him by being introduced to him there at the store. When he would come to Louisville he would always come to the store and make it headquarters, going in and out.

Q. Did you ever see him borrow any money from Philip Fable?

A. No, sir.

Q. Or from Frederick Fable, the old man?

A. No, sir.

Q. Did you ever hear Philip Fable speak of this farm that he bought up in Pennsylvania?

Objection by Mr. Reed.

A. No, sir.

Q. Did you ever hear of it?

A. No, sir.

Q. Did you ever hear of his having loaned money to John Dippold?

A. No, sir.

Q. Did he ever state, in your presence or hearing, that he loaned as much as ten or twenty thousand dollars to John Dippold?

A. No, sir.

Q. What property had Philip Fable at the time you were with the concern?

Objected to by Mr. Reed.

Q. Were there articles of partnership in the firm?

A. No, sir.

50 Q. Do you recollect whether the firm books show accounts raised against the different parties interested in the firm?

A. No, sir; I don't remember. I think the firm was under Mr. Fable altogether.

Q. Was the bank account kept in the name of Frederick Fable himself?

A. Yes, sir. The sons did not appear at all in the business, so far as I know.

Q. When Frederick Fable gave a check was any minute made of it—when you saw him give checks?

A. Certainly. That was always the case, so far as I observed. I never knew an instance in which he paid out money in which there was not an entry made of it. I saw cases of this kind every day.

This was so while Philip Fable was keeping the books and when I kept them. When I kept them everything that went in or out appeared on the face of the books.

Cross-examined.

By Mr. REED:

Q. During the time that you were connected with the business of Fable what was your occupation?

A. Salesman in the front part of the store, and all over the store. My business was to attend to customers.

Q. You say all the money of the firm was kept in bank—the daily receipts. How do you know that?

A. By seeing deposits made.

Q. Might there not have been money kept in the drawer in the safe without your knowing it?

A. No; not very well, I have seen money deposited when it was left in the safe.

Q. Had you access to the drawer?

A. No, sir.

Q. How do you know what money was in the drawer and what was not?

A. I could generally tell from the amounts that were collected during the day whether it was deposited or not.

Q. Did you carry deposits to the bank every day?

A. Not every day.

Q. There were times, then, that you did not know how much money was left in the drawer from deposits?

A. Yes, sir; but it was always made a rule to deposit everything in the way of moneys.

Q. How do you know that?

A. Because he gave me the book or took it himself.

51 Q. Is not this the case—that you understand this from what you conceive to be the usual practice of the house?

A. Yes, sir; it was the usual practice of the house.

Q. Did you ever carry money to the bank? Was not it always checks?

A. Yes, sir; of course, money and checks. It was not always checks; sometimes it was collections—checks and money that would be received from collections in the city.

Q. Was not it the habit of Frederick Fable or of the house to pay cash constantly for their debts instead of checks?

A. If the money was in the drawer they would pay in cash; if not, they would give a check. Payments were made in checks or money. I could not say whether it was generally paid in money or not. The generality of the local bills were paid in cash.

Q. A large part of their business is buying tallow from the butchers, is it not?

A. Yes, sir. They were always paid in money, with a few exceptions. When the bills were large—if 150 or 200 dollars—they were given checks, but it was always a rule to have money to pay all

butchers in money when they came in. The old gentleman would give a check and get the money.

Q. Philip Fable was in the habit of signing checks in his father's name, was he not?

A. He has signed them. He did not do it frequently. I know it was always a rule for Mr. Fable to do it. If the old gentleman was not there Philip had authority to do it.

Q. You never knew ten thousand dollars to be in the safe in money?

A. No, sir; I did not.

Q. Might it not have been there and you not know it?

A. Such a thing might accidentally have been, but I don't think it could.

Q. And yet you had no access to the drawer?

A. No, sir; except when I kept the key. I did not always have the key.

Q. Did you ever have the key of the money drawer in the safe?

A. No, sir; I have had the key to the cash drawer of the desk. No, sir; the drawer of the safe could not get ten thousand dollars of money in it. They might have put ten one-thousand-dollar bills in it, but I would have been apt to have known about it.

Q. Was Philip Fable or Frederick Fable in the habit of speaking about it every time they put money in the drawer?

A. No, sir; I suppose not.

—. But it was an unusual occurrence for them to have that amount in the drawer?

52 A. No, sir.

Q. It might have been there, then, and you not know it?

A. Such a thing might have been.

Q. You spoke of Mr. Frederick Fable's habits, his prudence and caution; were you intimately acquainted with his private affairs?

A. He generally placed confidence enough in me to tell me about a few little affairs of his—as to building the house, etc.

Q. Did he tell you in reference to giving the boys any money?

A. No, sir; he kept that to himself. He was not in the habit of talking very much about his business.

Q. Did he ever tell you of his investments in bank stocks?

A. The old gentleman did do so.

Q. What investments did he tell you about?

A. The thing happened to be brought up in this way: Speaking about the Kentucky National Bank, whether it would be a success, and he spoke about that, whether it would be a success; also in the German Bank, I had asked him whether it would be a success.

Q. Then, the one time he told you anything about his investments was when you asked him?

A. No, sir. You understand from me that on that occasion he discussed his bank stocks; he may have done it several times after; that is the time I remember of; that was a short time after I had been there.

Q. Had you known the old man before that—before you went there to work?

A. No, sir; I never had heard of him before.

Q. You are not a practical book-keeper?

A. I understand the theory and have had practice.

Q. What book-keeping did you do at Fable's?

A. Not much; very simple. I entered every sale that I would make on the blotter. I had graduated in a commercial college before I went there and have a diploma. It was about a year or so before I went there. After I graduated I went down opposite Brandenburg on a farm. I came from the farm to the city, and went to Miller, Ream & Co. as shipping clerk for three months, and from there I went to Fable's. I was there about seven years.

Q. If an amount of money, say ten thousand dollars, was drawn out of the moneys of the house, unless some entry was made of it on the books, the cash would be out of balance?

A. I should think so.

Q. But suppose a memorandum would be put in the drawer and the money replaced inside of a day or two, would it necessarily throw the cash out of balance?

A. No, sir; certainly not.

Q. That might have been done and you not know it?

53 A. A great many things might have been done and I not know it, but I was very likely to know it and all such transactions. Philip Fable used to confide in me a great deal.

Q. You never saw John Dippold borrow any money. Did you see his sons in there frequently?

A. Yes, sir; I have seen most of his family in there. Martin lived here; moved here afterwards.

Q. The business during Frederick Fable's lifetime was carried on by him himself?

A. Yes, sir. Philip and his brothers were employed.

Q. Were there any accounts kept on the books with them?

A. I don't know that there was.

Q. Mr. Browne has asked you about Fable's house; do you know whether entries were made on the books when payments were made on that house?

A. I think there were entries made on the cash book.

Q. That was paid out of the moneys of the house?

A. Yes, sir.

Q. Frederick Fable made payments—cash payments—and entries were always made on the cash books? You refer to transactions in the business of the house?

A. Yes, sir.

Redirect examination.

By Mr. BROWNE:

Q. Did the Fable boys receive salaries, or were they partners?

A. They were not partners. Philip generally got what money he wanted. Whether he was under salary I could not state. There was a certain amount—fifteen or eighteen dollars—that at the end of each week would go to "F. Fable." Whether it was F. Fable, Jr.,

or not I don't know. Rudolph was paid, too, after he commenced to work.

Q. What did the money average that Philip Fable drew, so far as you can recollect?

A. I am under the impression it would generally appear in F. Fable's name.

Q. About what money did Philip Fable withdraw?

A. Fifteen or eighteen dollars a week, or more, if he wanted it.

Q. Did it ever exceed fifty dollars a week?

A. Oh, no; I am really under the impression that all these things occurred in F. Fable's name; that if Philip would get a suit of clothes it would appear as "F. Fable." Philip was at liberty, generally, to draw what he wanted.

Cross-examination.

By Mr. REED:

Q. Philip Fable was more largely in the confidence of his
54 father than the others, was he not?

A. Yes, sir; he was in the office and attended to the general business of the firm; had a great deal to say about what was done.

Redirect examination.

By Mr. BROWNE:

Q. What was the capit ' stock of the concern?

A. I could not tell that.

JOSEPH SPEIER, a witness produced by the complainants, being sworn and examined, deposed as follows:

Direct examination.

By Mr. BROWNE:

Q. Where do you live?

A. At Butcherstown, in Louisville.

Q. How long have you lived here?

A. About thirty years.

Q. Did you know Frederick Fable?

A. Yes, sir; I knew him. He was my next neighbor.

Q. How long did you know him?

A. About 30 years—since I have been in this country.

Q. What sort of a man was he in business—a careful, painstaking man or a speculating man?

A. He would tell nobody what he would do; did the business himself.

Q. He made money, didn't he?

A. I don't know whether he made any money or not.

Q. How much did that house cost that he built up there?

A. I don't know.

Q. Did you ever know Frederick Fable to loan out money?

A. I don't know that neither. I did not know anything about his business.

Q. Was he an economical man, or did he waste his money?

A. I can't tell that; that is not my business.

Q. Do you know what his property consisted in?

A. No, sir.

Q. You don't know how much he was worth when he died?

A. No, sir; that I could tell nobody.

Q. What business was he engaged in?

A. I don't know.

Q. Did you ever talk to him about his business?

55 A. No, sir; never at any time.

Q. Was old man Fable a man to loan out his money without having some paper to show for it?

A. I don't know.

Cross-examination.

By Mr. REED:

Q. Was not Mr. Fable fond of his children?

A. I cannot tell you that neither. I cannot tell you anything in this question.

JACOB KRAUTH, a witness produced by the complainants, being sworn and examined, deposed as follows:

Direct examination.

By Mr. BROWNE:

Q. Where do you reside and how long did you live there?

A. I live in Louisville, and have lived here about 40 years.

Q. Did you know Frederick Fable; and, if so, how long?

A. Yes, sir; I knew him about 35 years.

Q. What sort of man was Frederick Fable in his business—careful or reckless?

A. He was very careful.

Q. Did he loan out money?

A. That I do not know, whether he did or not.

Q. Was he a man or not who would loan out money without security?

A. I could not tell that either.

Q. What is your judgment of the man from what you know?

A. He was very careful about his business; I know that much.

Q. You knew him as he built up his business, did you?

A. Yes, sir.

Q. Did he keep much cash on hand or not?

A. I don't know. I never had any talk with him about how much cash he kept on hand. He generally had some money on hand. We bought a piece of land together. He paid for it—that is, for his share of it. He did not run short of cash that I know of.

Q. Was not there some difficulty in buying machinery for your farm?

A. No, sir; not that I know of.

Q. Did you ever have any conversation with Frederick
56 Fable in regard to the improvement or stocking that farm, and do you remember his saying as to how he stood for money?

A. I think I paid in fifteen thousand dollars, and he paid in, I believe, eighteen thousand dollars. He always sent money down there and paid those things that were down there. He kept on, and finally I told him that I would not like to pay out any more money, and then he stopped.

Q. Did he pay this money out in checks?

A. I don't know. He laid it out here in provisions and for one thing and another.

Q. Did he have any partners?

A. Not that I know of.

Q. Where was that place that you and Fable had?

A. Down here in Muhlenberg county. It was coal works. For a while it was pretty heavy expense. We could not make anything by it, and finally we had to stop it. It did not pay us. This was about six years ago, I reckon. We did not carry it on very long because it did not pay.

Q. Did Fable keep his money idle or did he invest it?

A. I don't know. I never talked with him about making investments.

Q. Did Frederick Fable commence with money or did he make it all himself?

A. I don't know whether he made it or whether he had it.

Q. What business was he in when you first knew him?

A. Soap and candles. He was doing a right nice business then. His business was very large when he died. It increased during his lifetime. When I first knew him he worked himself, just as well as anybody. He worked in his factory, as much as I knew. I always found him there at work.

Q. Do you know anything as to how much his estate was worth when he died?

A. No, sir; I don't know anything about it.

Q. Did or did not you and Fable ever have some conversation about buying a threshing machine for your farm, and he speaking about being hard up for ready cash?

A. Well, I don't know. Sometimes he would state that he had not much money on hand now, at the present time, and we had better stop the thing down there.

Q. Do you know what he gave his boys?

A. No, sir; I never heard him say.

Q. What salary did old man Fable pay Philip Fable?

A. He told me once that he gave him $75 a month. I heard him say that often.

Q. How long before he died was that?

57 A. A year or two before he died.

Q. Do you know anything about the house that Philip

Fable lived in? Did old man Fable deed that to Philip or did he say anything about deeding it?

A. I don't know. The old man said he bought it himself. I don't know whether he deeded it to young Fable or not.

Q. Did he say that Philip had asked him to deed it?

Objected to by Mr. Reed as leading.

A. No, sir.

Q. How much is that house worth?

A. I never saw it. I don't know where it is. I don't know what kind of a house it is.

Q. How much is that house of the old man's out on Story avenue worth?

A. I don't know. He never told me anything about it.

Q. Have you any idea what that house would be worth?

A. Well, I suppose it is worth ten thousand dollars. It might cost more and it might cost less.

Mr. REED: I object to all the foregoing testimony as incompetent, irrelevant, and having nothing whatever to do with the case.

Cross-examination.

By Mr. REED:

Q. Frederick Fable seemed pretty fond of his boys?

A. Yes, sir.

Q. Did he ever tell you that he was working for their benefit?

A. He never told me that.

Q. He had a great deal of confidence in Philip, had not he?

A. Yes, sir.

Q. And Philip attended to a great deal of his business?

A. Yes, sir.

Q. The old man was not down there much about the business, was he?

A. No, sir.

Q. Philip had charge of things?

A. Yes, sir.

Q. Do you know whether Philip drew checks?

A. I do not know.

Q. He relied a great deal on Philip?

A. Yes, sir; me and him used to go down on the farm and
58 everything was left to Philip. He relied more on Philip than he did on the other boys.

Q. At the time that you ran that coal mine, did not Philip draw checks in the name of Fable & Krauth?

A. Yes, sir; we made up some money between us, Fable and myself, and we gave him the privilege of drawing checks.

Q. The old man told you he was paying Philip $75.00 a month; was that before or after Philip got married?

A. I think it was after Philip was married. I don't know exactly when. That was all the conversation I had with him about sala-

ries. I have boys and he had boys, and you know how men will talk about one thing and other.

Q. The old man always had money during the last years of his life?

A. Yes, sir; he had all the money that he needed to pay his debts promptly and make some investments, I think. He said to me once that he could raise the money to buy a hundred head of cattle.

Q. When was this you ran that farm?

A. About three years ago. I bought the cattle and Fable paid for them. He advanced whatever money was needed at that time.

Redirect examination.

By Mr. BROWNE:

Q. Do you know how Fable paid—in cash or in checks?

A. I have seen him pay in checks most of the time.

Q. Did he ever owe you any money?

A. I used to sell him tallow and lard. He paid me in checks.

Q. What amounts of money, large or small, in checks?

A. Sometimes three hundred or four hundred dollars. I could not say what was the smallest amount he ever paid me in a check. The checks were always bigger than twenty or thirty dollars. I sold him more goods than that. We settled up every month for tallow.

Q. Were you a constant dealer with him?

A. Yes, sir; at that time, when I was butchering.

Q. Was that the way he did business with butchers—by monthly settlements?

A. Yes, sir.

Cross-examination.

By Mr. REED:

Q. Did he do all business with butchers by monthly settlements?

A. Most of the butchers that he dealt with; that was for rough tallow.

59 Q. When were you selling him tallow? That was ten years ago, was not it?

A. It is about seven years since I quit.

Q. You sold him before that—up to about seven years ago?

A. Yes, sir: during the war.

Q. Frederick Fable was a prosperous man, was not he—made money in his business?

A. Yes, sir.

RUDOLPH FABLE, a witness produced by the complainants, being sworn and examined, deposes as follows:

Direct examination.

By Mr. BROWNE:

Q. Are you a son of Frederick Fable, a brother of Philip Fable?

A. Yes, sir.

Q. Were you in your farther's store and business during his lifetime?

A. No, sir; I was learning the soap business up at my father's factory.

Q. Do you know whether your father was in partnership with his boys or not?

A. I don't know; I was not of age then.

Q. Was Philip a partner with your father?

A. I don't know.

Q. How much salary did Philip get?

A. I don't know.

Q. What is your age now?

A. Twenty-three.

Q. When did your father die?

A. Last July.

Q. You were then of age?

A. Yes, sir; I was twenty-two.

Q. Had your father taken you into partnership before his death?

A. I don't know that he did. I don't know that he ever told me that he had taken me into partnership or not.

Q. How is the business conducted now? Are all the boys running the business?

A. There are three of us, the heirs of my father.

Q. Are you one of those running the business?

A. I am a son of Frederick Fable.

Q. Who else are in the business besides you?

A. Philip, Frederick, and myself.

Q. Is your sister interested in the business?

A. I could not say; it is the heirs that are running it.

60 Q. How much money do you get out of the business now? How much a week is allowed you?

A. It just depends on how much I want.

Q. To whom do you apply to get money? Do you have to go to Philip to get what money you want?

A. I go to the book-keeper, my brother Philip.

Q. How much does your father's estate amount to?

A. I don't know.

Q. How much is there in the business?

A. I don't know.

Q. Did you never have an appraisement made?

A. No, sir; not that I know of.

Q. Is your mother living?

A. Yes, sir.

Q. Did she ever get her rights out of the estate?

A. I don't know.

Q. Did your father leave a will?

A. I don't know.

Q. Did you ever see his will?

A. I don't know.

Q. Was ever an administrator appointed for your father?

A. I don't know nothing about it. I have been up at the factory,

and don't know nothing about the affairs. I was up there boiling soap.

Q. Did you ever look over your father's papers?

A. No, sir.

Q. Did your brother Fred. owe your father anything at the time your father died?

A. I don't know.

Q. Did your brother Philip owe your father anything at the time he died?

A. I don't know.

Q. Did you owe him anything at the time he died?

A. I don't know.

Q. When did you settle up the business last? When did Philip settle up the business last?

A. I did not keep the books, and I don't know nothing about the store affairs. I have been a soap-boiler, and I don't know nothing about the affairs between my brother and my father.

Q. How much money have you drawn out of the concern since your father died?

A. I don't know.

Q. A thousand dollars, five hundred dollars, fifteen hundred dollars?

A. I don't know.

Q. Have you drawn any money out of the concern?

A. Certainly; what I needed for clothes, etc.

61 Q. Have you drawn anything, except for your clothes and boarding, to keep you running?

A. Well, just when I needed money. I have no idea how much it is.

Q. Does it amount to twenty dollars a week?

A. I don't know.

Q. Does it amount to fifteen dollars a week?

A. I don't know.

Q. Did you ever hear your father talk about this Dippold matter?

A. No, sir.

Q. How much money was there in bank when your father died?

A. I don't know.

Q. Did your father owe anybody when he died?

A. I don't know.

Q. How much did you get by your father's estate?

A. I don't know.

Q. Haven't you ever inquired?

A. No, sir.

Q. Have you boys got any agreement as to the management of your father's estate?

A. I don't know.

Q. Did you ever sign any agreement? Did you ever make any agreement with your brothers Fred. and Philip as to the management of your father's estate?

A. We had an agreement together to carry on the business right.

Q. Has it been carried on?

A. Yes, sir.
Q. How much profit did you make last year?
A. I don't know.
Q. You have not withdrawn your profits, have you?
A. I don't know.
Q. By your agreement were you to share equally?
A. I don't know how they arranged it.
Q. Was the agreement in writing or not?
A. In writing.
Q. Did you and Philip Fable ever have any talk about this land that he bought from Dippold in Pennsylvania?
A. No, sir; never at any time.
Q. Did Philip Fable ever pay your father's estate back some money that he got from your father?
A. No, sir; I don't know anything about it. They never said anything to me about it.
Q. Has he ever paid you any money on that account?
A. I don't know.
Q. Suppose your brother Philip had put $28,000 in the Dippold farm, in Pennsylvania, and got the money from your father
62 to do it with, has he ever paid back that money to your father's estate?
A. I don't know anything about my father's affairs and my brother's affairs.
Q. Has Philip Fable ever said anything to you about it?
A. I don't remember.
Q. Do you know who he bought that place from?
A. I don't know nothing about the affairs.
Q. Did you never hear about that farm that Philip had bought up in Pennsylvania?
A. I don't know anything about their affairs.
Q. Whom did you ever hear speak about it?
A. I did not hear anybody speak about it. I did not know that he owned a farm up there. That was my father's affairs and my brother's affairs.
Q. If Philip ever bought a farm up there you don't know where he got the money to pay for it, do you?
A. I don't know.
Q. When did you and your brother Philip last talk about this case coming up?

Mr. Reed objects to the question as leading.

A. I did not know anything about the case coming up.
Q. Did you have any talk about this case coming up in Pittsburgh?
A. No, sir.
Q. Did you ever have any talk about a suit to take back that land he bought from Dippold?
A. No, sir; never at any time.
Q. When were you summoned as a witness to come here and testify?

A. Saturday.

Q. Did you and Philip have any talk after that summons was served on you?

A. No, sir; not a word. We did not talk anything about anything but the summons—about coming down here to testify.

Q. Did not he ask you what you knew about it?

A. No, sir.

Q. Didn't you tell him what you were going to swear?

A. No, sir.

Q. Was there not any talk between you as to what you would swear?

A. No, sir; not a word.

63 Mr. Reed objects to the foregoing examination, as to the conversation between Philip Fable and the witness in relation to this matter, as incompetent and irrelevant and because the questions are leading, and because counsel for the plaintiffs cannot in this way throw discredit on their own witnesses.

Q. Did your father ever take you into partnership?

A. No, sir.

Cross-examination.

By Mr. REED:

Q. Your sole business was at the factory? You paid no attention to the financial affairs of the house?

A. No, sir; nothing at all.

Q. Was your brother Philip or your father in the habit of talking to you about their financial affairs?

A. No, sir; they never talked to me about it. I was learning the trade—was up at the factory.

Q. Where you had been since your father's death—still up at the factory?

A. Yes, sir.

Redirect examination.

By Mr. BROWNE:

Q. Who has that agreement between the boys as to the business?

A. I don't know.

Q. Has not Philip got it?

A. I couldn't say. I don't know who had it. I couldn't say. I have not got it.

Q. Where did you sign it?

A. I don't remember where.

Q. You did sign it, didn't you?

A. I signed it.

Adjourned to meet at the same place (parlor of the Gault House) at 3 p. m.

And now, October 13, 1879, met again, at 3 p. m., pursuant to adjournment.

Mr. W. O. Dodd, of the Louisville bar, appeared before the examiner and stated that he was counsel for Margaret Fable,
64 widow, Frederick Fable, Jr., Rudolph Fable, Henrietta Fable, Louisa and Amelia, children of Frederick Fable, deceased; that they have an interest in the books of Frederick Fable, deceased, sought to be produced here, and that they decline to permit the defendant to take said books from their custody to produce them before the examiner, because said books constitute the private property of said persons, in no way connected with this litigation, and the effort to bring them here is manifestly for the purpose of fishing for evidence; that for the same reason they decline to permit the books relating to the business carried on since the death of Frederick Fable, deceased, to be produced.

Mr. Reed states that, in view of the objection made by the heirs of Frederick Fable, deceased, and his copartners, Philip Fable declines to produce the books called for by the *subpœna duces tecum* until he is satisfied that he is legally bound so to do.

The complainants' counsel here proposes to introduce in evidence the testimony of W. O. Dodd, and ask that he be sworn by the examiner for the purpose of testifying, and announce that they expect to prove by Mr. Dodd, and here introduce him for the purpose of proving, that he had been employed in this case solely and exclusively by the defendant, Philip Fable, and had no personal interview with the widow of Frederick Fable, nor with Frederick Fable, Jr., nor with Rudolph Fable, and that the refusal by him entered to allow the *subpœna duces tecum* to be obeyed was by the procurement and at the instance of the defendant, Philip Fable; and further offer to prove that the adjournment of the deposition of Philip Fable this morning was upon the assurance that the books would be forthcoming, and that the said adjournment was a device of the defendant, Philip Fable, for the purpose of procuring an obstruction to the *subpœna duces tecum*.

Mr. Reed, for the defendant, Philip Fable, objects to the foregoing offer as incompetent, irrelevant, improper, and scandalous.

Mr. Dodd declines to be sworn or examined, because it is sought to question him concerning matters of a confidential character as an attorney, about which he declines to be interrogated, and the other questions sought to be propounded are not pertinent to any issue.

PHILIP FABLE resuming the stand.

By Mr. BROWNE:

Q. When did you commence lending money to Dippold?

A. In the year 1875; probably in 1874. In 1875 he got the money.

Q. How much was the first sum you loaned Dippold?

65 A. I could not say. I don't remember.

Q. Did you loan him in small or large sums?

A. Sums of $500, $1,000, $1,500—something of that kind.

Q. Did you loan in any smaller sums than $500?

A. It may be.
Q. Did you loan him by check or in currency?
A. I could not say whether it was by check or not.
Q. You have no recollection of giving him a check?
A. No; I don't remember.
Q. Where did you hand him the money that you first loaned him?
A. At the store.
Q. Was all the money that you gave him given at the store?
A. He came around to the store and asked me for it.
Q. You spoke of having loaned him ten thousand dollars in this way?
A. Yes, sir; off and on.
Q. By what time had your loan accumulated to ten thousand dollars?
A. In the year 1875.
Q. Did you keep any memorandum of it at all?
A. Whenever he got any money I would make a memorandum of it.
Q. What have you done with those memoranda?
A. I had no use for them afterwards.
Q. What did you do with them?
A. Tore them up—burned them up.
Q. When did you tear them up?
A. After Dippold got the other money. I would keep a memorandum of what he got.
Q. Your loans to him previous to the making of these deeds amounted to exactly ten thousand dollars, did they?
A. I think it amounted to ten thousand dollars when I quit on him.
Q. Did you charge Dippold any interest for this money?
A. No, sir; we were buying coal and I was getting inside figures on coal. He gave me favors on coal and I gave him favors on the loan of money.
Q. Was that your reason for not charging interest?
A. That is the way I looked at it.
Q. How much money did Dippold ever borrow from you after that—after the first ten thousand?
A. Well, he got ten thousand dollars besides the notes given; altogether it amounted to $27,000. That was after taking off the $400.00 charged him for discounting the notes. I gave him ten thousand at Pittsburgh.
Q. Dippold never gave you any security for this money?
66 A. Only the deeds.
Q. Where did you get all this money you loaned to Dippold?
A. From my father.
Q. Did your father give you a check for it?
A. No, sir.
Q. Did he give it to you in currency?
A. He gave it to me in currency.
Q. How much at any one time?

A. When I told him that I had loaned him the money he sold some stocks or something and replaced it. That was the case in every instance of these loans. I reported to my father in each separate instance. I don't know how he replaced it, unless he sold stocks. He would replace the money I would report to him. I was the financial son and what I did was regarded by him as correct.

Q. When was the first sum?

A. I don't remember the day; I could not say.

Q. Was there anything in your father's business or memoranda which would show what that was?

A. I never found anything when I examined his papers.

Q. He had no memorandum of it there?

A. I could not see any.

Q. Have you any idea what stocks he sold?

A. I could not say; that was his own business.

Q. He did not talk with you on that subject—as to what stocks he sold?

A. No; because I did not ask him.

Q. He would have told you if you had asked him?

A. I guess so.

Q. Where did you pay the last money to Dippold—the last ten thousand dollars and the notes?

A. At J. Sharp McDonald's.

Q. Where does he live?

A. At a place called Sewickley.

Q. How far from Pittsburgh?

A. I never measured it; I don't know how far. I think it is 12 or 14 miles from Pittsburgh.

Q. How long were you at Sewickley in making this transaction?

A. I was there only a day.

Q. What part of the day were you there?

A. In the evening, at tea time—about seven o'clock I got up there.

Q. Did you see the deeds written?

A. No, sir.

Q. Who wrote them?

A. McDonald, I believe; or, perhaps, Jacob Dippold copied them.

67 Q. Were the deeds ready when you got there?

A. Yes, sir. Sharp McDonald handed them to me. I paid the money after I examined the deeds.

Q. Who took the acknowledgment of the deeds?

A. Smith, I think his name is, a notary public.

Q. Did you see him there?

A. No, sir. When I was there he was not there.

Q. Who went with you to McDonald's house?

A. Old man Dippold.

Q. You and old man Dippold went together?

A. Yes, sir.

Q. Smith was gone?

A. I never saw him.

Q. Old man Dippold acknowledged the deed, did he?
A. The deed was done when I got there.
Q. What was Dippold's object in going with you to McDonald's house?
A. I don't know anything about that.
Q. Had he any object in going there?
A. I guess to bring me up, because I would have died if I had stayed in that country town.
Q. Did not you and he go to Sharp McDonald's together?
A. Coming from his residence we went together, but going from Pittsburgh down I never saw him.
Q. Dippold and you went together when you got your deeds?
A. Yes; and we left together.
Q. You paid Dippold some money on that occasion?
A. I paid him ten thousand dollars cash.
Q. Was that in currency or gold or checks?
A. Currency.
Q. Was it greenbacks or national bank bills?
A. I am no banker, to pay particular attention. It was currency. I don't know what kinds of backs the bills had.
Q. What denomination of bills did you use?
A. Five or six one-thousand-dollar bills and the balance five-hundred-dollar bills.
Q. Did you get those in Pittsburgh or in Louisville?
A. In Louisville.
Q. Did you get them for the purpose of taking them up and giving them to Dippold?
A. That was the understanding.
Q. How did you carry them—in your pocket-book?
A. No, sir; I had a traveling satchel.
Q. How long was it from the time you got them in Louisville to the time you delivered them to Dippold, as you say?
68 A. Well; it was three, four, or five days.
Q. Did you put them in bank for safe keeping during that time?
A. No, sir; I kept them by me all the time. In the store when I was here, and upon my person up there.
Q. That was four or five days from the time you got them until you gave them to Dippold?
A. Yes, sir.
Q. From the time you arrived at Pittsburgh until you paid over these bills to Dippold, how long was that?
A. I got there the next morning after I left here in the evening.
Q. You carried the bills by you, then, all one day and night and all the next day, in Pittsburgh and vicinity?
A. I did not carry them about me at all. I had them in my satchel.
Q. Did you put your satchel in bank?
A. No, sir.
Q. Did you lock it up in the safe of your hotel?
A. I did not stop at a hotel.

Q. Who started the negotiations between you and Dippold for this property—you or Dippold?

A. I wanted to secure myself on the first, and he offered to give me that real estate of his to secure me.

Q. When did he make you that offer?

A. When he wanted the other $10,000—after I had given him $10,000.

Q. Did he offer to give you a mortgage?

A. He never said nothing about a mortgage; said he would give me deeds for real estate to secure me.

Q. Why did not you take the deeds to secure you?

A. I did take them.

Q. Didn't you say just now that you took the deeds because you had paid him ten thousand dollars, and then gave him eighteen thousand more?

A. Well, I had to secure myself.

Q. Where did he make you this offer, in Louisville or Pittsburgh?

A. He made it by letter; I think it was by letter. Probably he might have been down here, for all I remember. There might have been a coal-boat rise.

Q. Did he say in that letter how much he owed you?

A. I don't remember what he said.

Q. Have you got that letter?

A. Oh, Lord, no; it has been destroyed. I never keep any papers of any kind.

Q. Who is Sharp McDonald?

A. He is a son-in-law of Dippold. His first wife was Dip-
69 pold's daughter. His first wife was not then living.

Q. Did not you meet Dippold at his house?

A. I saw Dippold at his house. I saw Dippold there when Sharp's wife was dying.

Q. To whom did you give the ten thousand dollars and the eight thousand dollars in notes that you say you gave on receipt of these deeds?

A. To Mr. John Dippold.

Q. Did you put them in his hand?

A. I handed them to him.

Q. He received them from you?

A. Yes, sir.

Q. Was the whole transaction at one time?

A. Sharp handed me deeds, saying: "Here are the deeds, shell out your money." I examined the deeds; saw nothing wrong with them; saw nothing peculiar about them. I saw they were dated 22d and 26th of January.

Q. What reason was there for dating one on the 22d and the other on the 26th?

A. I don't know; probably Dippold thought he would secure the previous ten thousand dollars and get the other on credit again.

Q. Did you ask any questions at the time as to why this was done?

A. I never mentioned it at all—I said nothing. I had Sharp

McDonald's word that it was all right, and took my deeds and paid out my money.

Q. How long did you remain up in that country before you came back to Louisville?

A. I could not exactly tell you how long I remained.

Q. Several days?

A. I think probably I left the next day.

Q. Do you recollect what day of the month this was that you received those deeds?

A. Those deeds were the 26th of January, 1876; that was the day it was written; that was the date I received it.

Q. How many days prior to that had you left Louisville?

A. I think a day or two before that.

Q. About the 23d?

A. I could not tell you the dates of leaving here at all. I left here either in the evening or at eleven o'clock at night. I could not say positively whether it was three or eleven o'clock at night.

Q. How long were you probably gone, from the time you left Louisville until the time you got back?

A. When I go I never stay over a week. I was there probably a week; perhaps ten days; I would not say for sure. It was our busy season and they need- me here.

70 Q. That time was a very busy time with Fable's business?

A. Yes, sir; much more busy than other times in the year. There were more transactions being done in business—bigger trade—the fall trade and winter trade coming in.

Q. If this was the busiest time of the year, and you were the book-keeper of that concern, tell me who kept those books when you were away.

A. Nobody kept them. They made a memorandum.

Q. Do you mean to say that in the busy season you could go away for ten days, and that the whole establishment could run without a book-keeper for that time?

A. Yes, sir.

Q. Had Weaver made any entries in your absence?

A. Likely he had.

Q. Have you examined the books to see?

A. I have not.

Q. Do not you know, of your own knowledge, that those books would show that Weaver kept the books in your absence?

A. No, sir; I know he did not.

Q. Then you change your answer, and you say Weaver did not keep the books?

A. That is what I say. He kept the day book for entering the sales from the order book into the day book. Weaver did not keep any of the books. I have not examined the books lately.

Q. How can you answer positively now that Weaver did not keep the books?

A. I ought to know. I was the book-keeper. I say he did not keep the books.

Q. Who made any entries when you were absent?

A. I don't know. I would not swear that Weaver did not. I would not swear that he did. I think I can swear that Weaver did not make any entries during the time that I was gone.

Q. Weaver was in the employ of Fable at that time, was he not?

A. I could not say whether he was employed then or not.

Q. When did Weaver leave, in your opinion?

A. He did not leave until we discharged him. I could not say when that was. It has been some time—over two or three years ago. I hardly think he was there in 1876.

Q. Would not your books show?

A. I don't know whether they would or not, unless they would show when we paid him.

Q. The money which you took to Pittsburgh, which you say you paid to Dippold—is that the money you say you got from J. William Anderson?

A. Yes, sir; the large bills.

71 Q. Where did you get the five-hundred-dollar bills?

A. Some from him; I think I had one or two myself.

Q. Those that you had, did you get them out of the safe or out of your own private pocket-book?

A. I could not say; likely I got them all from him.

Q. You do not recollect what date you got the money from him?

A. No, sir.

Q. Were you some time collecting it up or did you get it up directly?

A. No; some days I was talking to him.

Q. Did you send him out to get those big bills?

A. I told him about it—yes, sir.

Q. Did you give him any commission to get those bills?

A. No, sir.

Q. Did he have any difficulty in finding them?

A. I never asked him.

Q. How long was he in getting them from the time you spoke to him until he handed them to you?

A. I don't remember; I could not say. I wanted the large bills in traveling; was not so much bulk.

Q. If you had this money in your father's safe and were particularly desirous to get thousand-dollar bills, why did not you go to the bank?

A. I have tried that and some of the banks have not got it.

Q. Did you try at the Masonic Savings Bank?

A. I don't remember.

Q. At the Western Bank?

A. I could not say.

Q. At the bank of Kentucky?

A. I could not say. I did at some banks before that. We could not get any big bills.

Q. Don't you know it is perfectly easy to get big bills here for small currency?

A. It may be, for all I know. I don't remember that I tried. I was anxious to have big bills to travel with.

Q. Don't you know that for a large depositor banks are always willing to do these accommodations, and even to put themselves to trouble?

A. They may or may not, sometimes.

Q. Don't you suppose Frederick Fable could have got any such accommodation from his bank?

A. Probably, if he had tried, he might.

Q. As to those four notes, Mr. Fable, they were each for how much?

A. Two thousand dollars.

72 Q. What date did they bear?

A. The date the deed was given to me that evening at Sewickley. They were 4, 6, 8, and 12 month notes and of the same date. Sharp McDonald wrote them. I did not see him write them. I signed them there at the time of receiving the deeds. I handed the notes to Mr. Dippold.

Q. When did you next see those notes?

A. I don't know. It was the latter part of that month or the first part of the next. The latter part of January or the first part of February—somewhere along there.

Q. It was, then, but a few days after the execution of the notes that you again saw them?

A. Yes, sir; a few days after I left; I saw them here at my office, here in the store. John Dippold brought them in there. I had written for him to bring them down. I wrote a letter at the store; do not remember whether I wrote it on a letter-head of that concern. I did not keep my letters in a press copy book. I don't remember whether I did or not; I could not say.

Q. What were the contents of that letter?

A. I wrote to him asking if he wanted the notes discounted; if he did, to come down. I signed that letter Philip Fable. Dippold came down. I don't know whether he met any delay or not. I paid him the face value less $400. The notes did not bear interest. He gave me up the notes when I paid him for them. I paid him for them at the store. I paid him $7,600 in cash. I don't remember what sort of bills. I would not be sure that I did not give him a check. I may have given him a check for a part of it. I think I gave him cash. That is my usual habit in handling such sums. I don't like this check system.

Q. What did Dippold do with that money?

A. I don't know—paid his debts, I guess. He did not pay any to me. I never got any of it, neither did my wife. I don't know whether Sharp McDonald got any of it or not. I don't know anything about Sharp's business or Dippold's.

Q. How long was it after that that you put these deeds to record?

A. It was in December, 1877, I sent them to Sharp McDonald to have them recorded. That was nearly two years afterwards. Sharp McDonald did not attend to recording them. He did not attend to it immediately; he did afterwards.

Q. How long did he delay giving attention to those deeds?

A. I think they were put on record in February. I had written

to Sharp three or four letters. I did not keep copies of those letters to Sharp nor to Dippold. I have not now any of Dippold's letters to me. They have all been destroyed.

Q. Have you any letters of Sharp McDonald to you in regard to those transactions up to the time of recording the deeds?

73 A. I got no letter when I sent the deeds that he had attended to it.

Q. From the time you went to Sewickley to the time you sent the deeds had you any correspondence with Sharp McDonald?

A. No, sir; I had not.

Q. Was there any intimacy between F. Fable and John Dippold?

A. Just friendship. The son of one had married the daughter of the other.

Q. When did you marry Dippold's daughter?

A. March 12th, 1874.

Q. How soon after that did you commence loaning him money?

A. I could not exactly tell you; it was some time afterwards.

Q. Were you a partner of your father, Mr. Fable?

A. No, sir.

Q. Your father had no partners in his business?

A. Not since 1866.

Q. Were any of his sons ever partners in business with him?

A. No, sir.

Q. What salary did your father allow you while he was living?

A. Any amount I wanted.

Q. How much did you take with his approbation in the way of salary?

A. I don't know. Whenever I wanted any money I just helped myself. I could not say how much I took. After I got married I drew $1,200 a year. Before that I took just as much as I wanted.

Q. After you were married you went to housekeeping?

A. Yes, sir; boarded for a little while. After father bought a house I went to housekeeping.

Q. Why did not you take the house also?

A. The house was understood to be mine; that was what the old man told me. He never made me a deed or gave me any memorandum in writing to that effect.

Q. Who kept the principal supervision of your father's business whilst he was living, as to business management or moneyed concerns?

A. I did. He relied everything on me.

Q. The old man was just a figure-head?

A. He was no figure-head; he was a gentleman.

Q. Did he do anything in regard to the management of the business?

A. If I could not manage it I would ask him for instructions, and he would give them to me.

Q. Who attended to the investments?

A. I could do it just as well as he could.

Q. Did you ever do so in his lifetime?

74 A. Only in one transaction; when we bought this Ken-

tucky land in connection with old man Krauth. I wrote the notes, if I am not mistaken.

Q. When the old man gave in his property for taxes, did you give it in or did he give it in himself?

A. He gave it in himself.

Q. Who swore to the valuations, he or you?

A. I never saw any swearing done in the assessor's office only during the war times.

Q. Don't you know the assessor swears every merchant as to the tax-list?

A. I never saw him.

Q. How much was your father's estate valued at in the year 1871?

A. I could not say.

Q. Was it as high as thirty thousand dollars?

A. Well, you can't build a candle factory for that.

Q. Is it not a fact that in the years 1871, '72, '73, '74, '75, '76, '77, and '78 the assessed valuation of your father's estate never exceeded thirty thousand dollars?

A. That may be.

Q. And he gave it in himself?

A. That is the assessor's fault.

Q. Who has given in that assessed list for taxes since your father's death?

A. I have.

Q. At what have you assessed your father estate?

A. I have just been doing the same thing. They would ask me when they came in the store, and I would say it was about the same thing.

Q. The assessments for the last six or seven years have been false have they, Mr. Fable?

A. They have not. If we can save taxation we would not be a lunatic and give in more and pay more taxes.

Q. Your property has been listed at an under valuation, has it not?

A. I don't know whether they list manufacturers cheaper than anybody else, but I think they do. I did not swear to this last list for this year. I did not give my list in April. He came in with his book; could not say what month it was in. He asked me to check it off all right. I did not swear to it; he never asked me to. I never have sworn to the assessor's list.

Mr. Reed enters an objection to all the foregoing testimony in relation to the value of the estate, the assessment, etc., as incompetent and irrelevant.

75 Q. Then, in this Dippold matter you got from your father twenty-eight thousand dollars which went to Dippold?

A. $27,600.00. I have not paid that back to my father. I have never put it back to the estate. My brothers and sisters have never called upon me for any account.

Q. At present are you sharing equally in the profits?

A. Yes, sir; if any are made.

Q. Have you ever charged yourself on the books of the new concern as indebted to the estate in any sum?

A. No, sir.

Q. Have you ever given to your brothers and sisters or any of them a statement that you owed your father $27,600?

A. No, sir. They never asked me. When the proper time comes I guess it would be there.

Q. If it was demanded of you to-morrow you would respond to it?

A. That would be to see. I guess I would.

Q. Did you know this property well up at Baden?

A. I have examined it. It was farm land. I could not say what it is worth an acre. It pays very poor nowadays.

Q. How many bushels of corn would it raise?

A. I don't know. I have it leased.

Q. How did it compare with other farm lands in that vicinity?

A. I don't know anything about it. I think it is as good ground as I laid my eyes on just there.

Q. How much was it assessed for, for taxation?

A. Dippold is living on the place and he has attended to it. I gave him a power of attorney to attend to my affairs up there and put him on the place. He has been there ever since this deed was executed and is there now.

Q. Do you know what it is listed for for taxation?

A. No, sir; he accounts to me for rents and profits. I have not called on him for any account yet. In the three and a half years since these deeds were executed I have never got a cent of money out of it.

Q. Did not Dippold pay the taxes on it?

A. He pays the taxes all the time. The understanding was he was to pay the taxes and keep the place in repair, which he has been doing. It don't pay as an investment.

Q. How many acres?

A. Two hundred and forty-eight and three-quarters, and another tract of eleven acres. I would be happy to think it was worth a hundred dollars an acre. I can't see any hundred dollars an acre there.

Q. Have you ever seen a hundred dollars an acre there since your eyes have been directed there?

A. I thought it was then, but I don't see it now. I would not sell it for $50 an acre.

76 Q. When did you first converse with Mr. Dodd in this case?

Mr. Reed objects to the question as incompetent and irrelevant.

A. I saw him to-day, after we adjourned for dinner.

Q. Is it not a fact that you requested Mr. Dodd to protest, in the name of your mother and brothers, against the production of the books under subpœna?

A. I did not protest.

Q. Did not you ask Mr. Dodd to do it?

A. No, sir.

Q. Didn't you have him asked to do it?

A. I might have done that.

Q. Has Mr. Dodd seen your mother or your brothers to-day, that you know of?

A. Not as I know of.

Q. Has not his only interview been with you?

A. I could not say; that may be.

Q. Did your mother or your brothers, or either of them, direct you to employ Mr. Dodd?

A. They never said anything to me.

Q. How much estate did your father leave?

A. I could not say; there has never been an appraisement.

Q. Was not there a valuation at one time?

A. No, sir.

Q. Did not Nick Miller take part in an appraisement or a valuation?

A. No, sir; Nick Miller was at his death-bed.

Q. Did not August Fable have something to do with the valuation of the estate?

A. No, sir; he was at the funeral.

Q. What do you value the estate at?

A. I have not placed a valuation upon it at all.

Q. Did you never make oath that it was quite one hundred thousand dollars?

A. I never made any oath in regard to this estate.

Q. Didn't you swear that there was one hundred thousand dollars invested in the business?

A. Yes, in regard to that, I did; but what his estate is worth I cannot say. He never owed any debts; his estate must, therefore, equal one hundred thousand dollars.

Q. What is your average bank account since the old man's death—has it increased, or is it the same?

A. I don't remember. I never paid any attention. I have no idea what it is to-day. I have no idea what it was at the time of the old man's death.

77 Q. What stocks did the old man leave?

A. That concerns me; that concerns nobody else. I could not say how much he left in stocks and bonds. I never figured that up. We kept that at a private place, in safe keeping.

Q. Did you ever get any money from John Dippold since you married his daughter?

A. I did not get any money from him. I got my household furniture; that was all. I never got any money from him since the sale of this place at Baden.

Q. Have you ever gotten any money from Sharp McDonald on Dippold's account, directly or indirectly?

A. No, sir; I never hear from Sharp for a year or so.

Q. Was there any correspondence between your father, Frederick Fable, and John Dippold in regard to this Baden purchase of yours?

A. If there was I did not know it. I don't think there was. I did all the correspondence, unless father would write a German letter. We did not keep a letter-book with those letters in it.

Q. What did the purchases of tallow or fat amount to a week, in 1876?

A. I could not say.

Q. Were they more or less than now?

A. Just according to how it comes in.

Q. What is about an average week's purchase with you now?

A. I never tested it at all. I could not say. It is just according to how butchers bring it in.

Q. How much can you use a week?

A. If I had the factory book I could tell you better. I don't run the factory and can't tell you anything about it. I have no idea of the weekly purchases. We now pay, wherever we buy, every month, to the butchers who bring rough fat. They bring it by drips of 50 or 75 pounds. They want it to run by the month, and we settle the first of every month.

Q. When you settle with them at the end of a month, do you make up a statement and give them a check?

A. No; I pay out the money; get the money from bank sometimes and pay them right there.

Q. How long do you keep that money in your safe waiting for them to come?

A. Well, the rule is that they have got to be there between the first and the second. We don't want to have them coming there two or three times for money. They come very promptly.

Q. A good many of them are your customers?

A. Oh, yes; we have considerable of them—the same old trade and customers.

Q. What butchers, for instance, do you trade with now that traded with your old firm?

78 A. There are so many of them I could not tell you. If I had my receipt book here I might tell you some. I can give you plenty of names: Slomer, Harcome, John Duff, William Jarvis, F. Keiser. I can give sixty or seventy of them if you want them.

Q. Did you not testify once under oath, on the 25th of April, 1878, in the matter of John Dippold & Sons, in the district court of the United States for the western district of Pennsylvania, case of No. 3288, in bankruptcy, before Register Shafer? When questioned by Mr. Barton, when asked what was your interest in the business, did you not say this: "Well, sir, there are three brothers of us carrying on the business in father's name. My interest is one-third."

A. That is where Barton made a mistake. Before I got through talking Barton said, "one-third." He jumped in. Knox spoke up and said to Barton not to speak too quick.

Q. Did you not, in the same examination, further testify in answer to questions as follows: "Q. Has your father any interest? A. No, sir; the business is carried on in his name and he does all the advancing. Q. How much capital was there invested in the business? A. There is over one hundred thousand dollars." Were not these questions put to you, and did you not give those answers as just written down, you being at the time under oath as a witness?

A. I think I did.

Q. Were those answers true?

A. Well, to the best of my knowledge, I think I answered that, but I would not be sure of it.

Q. Are these as true as the answers you have given to-day?

A. Well, they are as true as what I am giving you now.

Q. Did you not in that examination have put to you the following questions and return to them the following answers, to wit: "Q. Was the money (meaning the money you paid to Dippold) in checks, or what? A. Currency. Q. Legal tenders or national bank notes? A. It was of all descriptions, in currency. Q. Where did you bring that money from? A. From the city of Louisville. Q. What bank did you draw it out of? A. I did not draw it out of any bank; it accumulated in the office." Did you or not have those questions put to you and make those answers?

A. Yes, sir.

Q. I will now ask you what is the weekly accumulation of actual cash in your safe in your business?

A. I could not say.

Q. Do you allow as much as five or six thousand dollars to accumulate in your safe without depositing?

A. I never deposit currency. I keep all but the checks and exchange. I could not say what the weekly accumulation is. I have never made any estimate. I am not able to make any approximate estimate. It comes and goes.

79 Q. Could you, by way of giving us something to form an estimate from, inform us how much currency was in your safe at the close of business last night?

A. I was not there last night.

Q. Well, Saturday night.

A. I could not say. I did not count it. I don't count cash every day. I don't balance cash every day. I keep a cash book. I am not as particular as some people are.

Q. On the same examination in which you testified before the register was or was not this question asked you and this answer made by you under oath: "Q. So you took money out of the firm to the extent of $28,000 and did not charge it? A. Only what account my father has got; he keeps account of it." Was that question propounded and that answer given?

A. I suppose it was.

Q. At the time you gave that deposition, on the 25th of April, 1878, your father was living?

A. Yes, sir.

Q. Have you in your father's papers found any account of this money?

A. I never saw any yet. I have examined in one particular place. He had an immense amount of papers. He had no books in which this was charged. I never saw any books.

Q. How are you able to say that he kept an account of it?

A. That was what he told me, that he charged up to each child what he got, so that after his death one would not get more than another. It was his purpose to keep a strict account, but I have not

found any such book of account. I have not heard of any one who has seen such a book. None of my brothers have examined his papers at all. I have not found any books.

Q. I have been examining you from the transcript of your testimony given in the matter of John Dippold & Sons, as before described, and I ask you now to look at this and say if this is the paper.

Handing witness the manuscript containing the testimony taken before Register Shafer.

A. So far as I see, it is. That is the paper.

The examiner marks and signs the paper with this endorsement, to wit: "This paper submitted to Philip Fable on examination by Col. John Mason Browne, as attorney for the plaintiffs, at Louisville, Ky., October 13th, 1879, which is referred to for the purposes of this deposition and made part thereof."

80 Q. During the lifetime of Frederick Fable did he do much business in the way of giving out negotiable notes?

A. No; he never gave out any notes, or not many of them.

Q. What did he give out notes for?

A. I don't know. Sometimes we would run short and have to raise money—for instance, to buy tallow when tallow was down.

Q. When he was in a press for money he used notes?

A. Yes; that would happen sometimes.

Q. At what periods of the year, as a general rule?

A. In the winter time.

Plaintiffs' counsel requests the examiner to prepare a certificate showing the question raised by the record with reference to the production of the books called for by the *subpœna duces tecum*.

Adjourned to meet October 14th, 1879, or until after the court shall have determined the question as to the production of the books.

The examiner prepared a certificate setting forth the delivery to him of the *subpœna duces tecum* directing Philip Fable to appear and produce certain books, same having been served upon said Fable; his failure to produce them at the beginning of the hearing; the adjournment at 3 p. m. to afford him him further opportunity to produce them; the appearance of Mr. Dodd and his statements in behalf of the widow and heirs of Frederick Fable; the offer of Mr. Browne, plaintiffs' counsel; the declination of Philip Fable to produce the books, and the subsequent testimony of Philip Fable concerning the employment of Mr. Dodd, as hereinbefore fully set forth. This certificate was delivered to plaintiffs' counsel and was by him presented, on the morning of October 14th, 1879, to the judges of the circuit court of the United States, sitting in Louisville—Baxter, circuit judge. Upon motion, the court granted a rule upon Philip Fable requiring him to show cause why he has not and does not produce the books as commanded by the *subpœna duces tecum*, directing an immediate answer and committing said Fable, who was in court, to the custody of the marshal until answer made.

The court's engagements not permitting a hearing upon the rule, upon the 14th of October said Fable was released upon his own recognizance, and 10 o'clock, October, on the morning of the 15th, fixed for hearing.

At the appointed time, on the morning of the 15th, the matter came on to be heard, an answer having been filed by Philip Fable. The court directed the books to be produced as commanded by the subpœna, permitting the rule to stand and said Philip Fable to be at large upon his said recognizance until the order of the court be fully complied with.

81 And now, October 15th, 1879, at 12 m., the examiner was in attendance at the parlor of the Gault House to proceed with the hearing.

PHILIP FABLE resuming the stand.

By Mr. BROWN:

Q. Have you now before you, in obedience to the *subpœna duces tecum*, the day book of Frederick Fable, showing his business for the month of January, 1876, and the following months, and the ledger covering the same time, and the cash book for the same time?

A. Yes, sir; these are the books; that is all I know.

Q. I now ask you to look at the day book, commencing on page 131, with the entries of January 1st, 1876, and continuing until the 1st of July, 1876. Are those entries in your handwriting?

A. Yes, sir.

Q. Do they not cover the pages from 131 to 196, inclusive?

A. I guess it is all mine; every bit of it.

Q. Look on page 142 of the same book, at the entries for January 22d, 1876. Are they in your handwriting?

A. Yes, sir.

Q. Those of January 24th and 25th, on page 143, and January 25th, 26th, 27th, and 28th, on page 144, and January 29th, 30th, and 31st, on page 145; January 31st, on page 146; are they in your handwriting?

A. Yes, sir.

Q. Look on the first page of the ledger and state whether the cash account, commencing with July, 1872, and ending June 30th, 1876, is all in your handwriting.

A. That is every bit in my handwriting.

Q. Does this ledger contain any account raised as between you and the firm?

A. Yes, sir; on page 478.

Q. Look at that account in the year 1876; how much is charged against you?

A. There it is—twelve hundred dollars. That is my own individual account. That is not charged to me from F. Fable; this is salary I have been working for.

Q. Look at page 479 in that ledger—the account of C. P. Weaver; can you tell from that account when it was that Weaver quit the employment of the firm?

A. August 31st, 1876.

Q. Is there any account of Philip Fable on the books except that which appears on page 478?

82 A. That is all.

Q. Will you please produce the bank books for the early part of 1876?

A. I would like well enough to do it if I could find them. I have not got them; they have been destroyed. I have looked for them through dirt and dust and everything else.

Q. Look at page 5, at the account of F. Fable. Is that the account of your father, Frederick Fable?

A. Yes, sir.

Q. Look at the latter part of that page, commencing with the entries of January, 1876. What debits and credits of cash appear to the account of Frederick Fable?

A. The debits are, in January, 1876, $287.00; February, $97.00; March, $84.00; April, $448.00; May, $386.00; June, $329.00.

Q. Look at the same account carried forward on page 15 and give the same information.

A. July, $197; August, $134; September, $416; October, $241; November, $114; December, $143. I have left off cents and merely called the round numbers.

Q. Look at the account of bills payable on page 6 of the same ledger and give to the examiner the bills payable account.

A. The account shows that in January, 1876, bills payable account was debited $3,000 in the Western Bank; February 7th, Masonic Bank, $2,000; April 6th, F. Fable, Jr., $515.00; April 7th, Western Bank, $3,000; May 3d, Rudolph Fable, $790.00; June 1st, Masonic Bank, $5,000; June 9th, Western Bank, $1,000; June 10th, F. Fable, Jr., $500.00; July 10th, F. Fable, Jr., $233.00; October 4th, Masonic Bank, $5,000; November 6th, Masonic Bank, $3,000. To the account is credited, February 7th, Masonic Bank, $2,000; March 25th, Masonic Bank, $2,000; April 7th, Western Bank, $3,000; June 9th, Western Bank, $3,000; August 11th, Western Bank, $1,000; October 4th, Masonic Bank, $5,000; November 6th, Masonic Bank, $5,000.

Q. Is there a stock account in the ledger?

A. No, sir; there is none—no separate stock account.

Q. When the business discounted paper in the bank did the bank pass that amount to the credit of Fable or Fable & Sons?

A. F. Fable, I presume. There was no F. Fable & Sons.

Q. Who drew the checks?

A. I drew them and father drew them; sometimes father would not get down to the store, and I drew them. The banks recognized my authority to draw checks; they were honored by the banks—by the Western Bank and by the Masonic Bank. There was never any question made of that.

Q. Was it a frequent occurrence—your exercise of this authority?

A. I signed checks. My right to do so was recognized by my father and by the banks.

83 Q. I have heretofore shown you or read to you certain

figures of the assessment of the estate of Frederick Fable. I will now repeat them as the assessment of F. Fable for the following years, as taken from the books of the assessors for Jefferson county, Kentucky: In 1868, $3,900; 1869, $3,600; 1870, $3,900; 1871, $22,080; 1872, $20,880; 1873, $20,700; 1874, $21,750; 1875, $22,700; 1876, $28,100; 1877, $31,050; 1878, $27,150; 1879, 27,150. Did you give in the assessment of 1879?

A. I just told them it was the same assessment; I did.

Q. Was that the same assessment that had been given in by your father the previous year?

A. I could not say. They would come into the store, as I said the other day, and I would say, "The same," and they would mark it off.

Q. Have you any reason to suppose that the other assessments were or were not given in by your father?

A. Most of them were given in by me.

Q. Most of these which I have read were given in by you, in your opinion?

A. Yes, sir; to save taxation.

Q. On page 12 of the ledger, merchandise account, I see you have an entry to the credit of merchandise, balance forward, $68,696.89. Look at the entries there and tell me how much of that was stock in the factory and how much cash.

A. I could not tell you that; I have not got any account of it.

Q. What was the value of the stock and fixtures and manufactured goods; just by approximation?

A. I could not tell you about. We never appraised the factory at all. The factory is worth more than the stock is.

Q. The stock and fixtures are worth over $50,000?

A. Yes, sir.

Q. Seventy-five thousand?

A. I do not know what valuation would be put on it by appraisement.

Q. The merchandise account, on page 12, shows that the bulk of this appraisement, $68,000 odd——

A. It does not include machinery or buildings; it includes stock.

Cross-examination.

By Mr. REED:

Q. What does the county assessment include—anything but real estate?

A. That is all; it includes real estate and buildings, but they have never assessed a manufacturer as they would anybody else. They are not assessed as high. There is no bank stocks or United States bonds assessed.

84 Q. Can you give us an average of what your gross sales are per year?

A. About $100,000.

Q. Your father was largely in the habit of discounting his customer's paper, was he not?

A. Sometimes he would, but very seldom. He always held most

of it. He could get money sometimes cheaper, and got a higher rate by holding merchants' paper. He got ten per cent., where the bank only charged him seven or eight.

Q. There has been no administrator or executor appointed for your father's estate?

A. None at all. There are no debts.

Q. Was there any understanding between your father and yourself that this advancement of money that he made to you was to be equalized on the settlement of the estate?

A. That is what he told me. He said he would charge everything up to each one of the children.

Q. That account he kept himself?

A. Yes, sir; it had nothing to do with the books of the house.

Q. You say Dippold came in frequently and borrowed money. Do you mean John or Martin?

A. I mean Martin Dippold, principally.

Q. Was not your reason for not charging Dippold any interest on this loan your relation to him and your friendship for him, and the fact that he had been kind to your wife when you were married, and the additional fact that he was to pay the taxes and keep the place in repair?

A. Yes, sir; those were the reasons.

Q. State how Mr. Weaver came to sever his connection with your firm.

A. Weaver knows. He was discharged.

Q. I will ask you whether or not, in anticipation of this trip to Pittsburgh, you did or did not gather up and keep together cash for several days prior to your departure?

A. Yes, sir. The cash came in there, and father would draw his dividends and I would have charge of them. This was when I heard that Dippold wanted the other ten thousand dollars. It was the accumulation of several days.

Q. You never repaid this $27,600 to the estate because there has been no adjustment between you and your mother, brothers, and sisters?

A. No, sir.

Q. You have been asked in regard to the value of the Dippold farm. Was it not the fact that you took a greater risk on that farm —lent a greater amount of money—than you would have done if Dippold had been a stranger?

85 A. Yes; my friendship induced me to lend more.

Q. Did you consider John Dippold solvent at that time?

A. No, sir; I did not know anything about his affairs at all.

Q. In your testimony before Register Shafer, in Pittsburgh, you say that there are three brothers of you carrying on the business in your father's name, and further state that your father has no interest in the business that was carried on in his name, but that he did all the advancing. State what you mean by that.

—. There was a verbal understanding between us and the old gentleman—*rate. I have never failed to find the name of any business man in the*—that after his death the business would belong to the boys;

that he was working for our benefit, and that we had got to take an interest in the business now with the prospect at his death of going ahead with his business.

Mr. Reed enters an objection to all the testimony relating to the estate of F. Fable and the financial part of his business transactions as incompetent and irrelevant.

Adjourned until 2 o'clock p. m.

Two o'clock p. m.

JOHN KRAUTH, a witness produced by the complainants, being duly sworn and examined, deposed as follows:

By Mr. BROWNE:

Q. What is your age?
A. Thirty-five.
Q. Where do you reside?
A. In this city, Louisville.
Q. Do you know the Fable family—Philip Fable and his brothers?
A. Yes, sir.
Q. Do you know Rudolph Fable?
A. Yes, sir.
Q. How long have you known Rudolph?
A. Well, I have known him ever since he was a little boy. I knew the whole of them.
Q. What is Rudolph Fable's intellectual capacity? Is he a man of sense, or is he a weak brother?
A. I think Rudolph is a very sensible young man.
Q. Is he a business man?
A. I don't know anything about his business qualities. I know something about his running around. He seems to be well posted at that.
86 Q. Has he as much sense as the other brothers?
A. He has the reputation up in his neighborhood of being the smartest one of the lot.

Mr. Reed objects to this testimony as incompetent and irrelevant.

Cross-examination.

By Mr. REED:

Q. What is Rudolph's business?
A. In his father's time he stayed around the factory. He was portioned off to one department in that factory. I think he was boiling soap. The other one had the other department.
Q. Philip attended to the financial business?
A. He was at the store. At one time Rudolph was sent to the store to learn the business. I could not say how young he was. Most of the time he stayed around the factory.
Q. Is he a man of much education?
A. I think he is.

Q. What do you base your opinion on?

A. He went to school regularly; the common schools here.

Q. You say he is a man of good business capacity, do you; or don't you know anything about that?

A. I said I did not know whether he had any business to do down here at the store or not. I never saw him transact any business at the store.

Redirect examination.

By Mr. BROWNE:

Q. Has he got sense enough to transact business—to attend to his own affairs?

A. Oh, yes.

Q. Does he keep an eye to his own moneyed interests?

A. Well, yes; he is pretty close. I have been in his company several times. He has been in company that I don't think he ought to have been in—with such people as myself and others of my age.

Recross-examination.

By Mr. REED:

Q. Does he drink?

A. He is a good beer-drinker. He can stand as much beer as anybody.

87 JOHN BARRETT, a witness produced in behalf of the complainants, being duly sworn and examined, deposed as follows:

Direct examination.

By Mr. BROWNE:

Q. Where do you reside?

A. Louisville, Kentucky.

Q. What is your age?

A. Twenty-four, nearly twenty-five.

Q. State whether you have made any examination of the directories of the city of Louisville with a view of ascertaining whether the name of J. William Anderson appears in any of them as a resident of that city, and more particularly as a broker in that city.

Objected to by Mr. Reed as incompetent, irrelevant, and hearsay.

A. I did make an examination some time last spring; April or May, I think it was; went through the city directories for the years, I think, from '79 back; anyhow for 1878, 1877, 1876, 1875, 1874, 1873, 1872, 1871, 1870; I think as far back as 1869; anyhow, as far back as 1870.

Q. Did you find the name of J. William Anderson in any one of those directories?

A. No, sir; I was unable to find any man of that name.

Q. Did you at any time ever make any inquiries with the view of ascertaining whether there had ever lived such a man here within that period of time?

A. Yes. I did inquire of all the brokers, stock and bond brokers, that I knew of, and they all told me that they never heard of the man.

Objected to by Mr. Reed as incompetent and hearsay.

Q. Was your inquiry diligent or merely casual?

A. It was very diligent. I went to all that I knew, and I inquired of many other business men—several bankers; one at least; his name was Anderson, the assistant cashier of the Bank of Kentucky, one of our largest banks. I was unable to ascertain anything about J. William Anderson.

Q. Do you know anything as to the character of the city directories those years—of their reputation for accuracy among business men?

A. My impression and understanding is they are regarded as accurate. I have never failed to find the name of any business man in the city in them who resided in the city during the year that the directory was published. I have referred to them very often in learning the whereabouts of persons.

88 Cross-examination.

By Mr. REED:

Q. You never knew a case in which the name was omitted from the directory that you looked for?

A. I never heard of any business man—any man of any standing—in this community that was left out.

Q. You are an attorney-at-law, Mr. Barrett?

A. Yes, sir; in the office of Barrett & Browne.

Q. As such you are connected with the attorneys for the plaintiffs in this case?

A. I am in their office, in their employ.

Q. Did you look for Andersons of any other name tham J. William in looking through the directory?

A. I can answer that this way: I looked for an Anderson as a stock or bond broker, and I found none in that business, nor did I find any J. William Anderson. I am under the impression that I asked W. George Anderson whether he knew anything about J. William Anderson, and he said he never heard of him.

Objected to by Mr. Reed as incompetent, irrelevant, and hearsay.

Redirect examination.

By Mr. BROWNE:

Q. You made this investigation by the direction of Barrett & Browne?

A. Yes, sir.

JOHN T. G. GAULT, a witness produced in behalf of the complainants, being duly sworn and examined, deposed as follows:

Direct examination.

By Mr. BROWNE:

Q. State your residence and occupation.

A. I live in Louisville. My occupation is that of a bond and stock broker.

Q. How long have you been engaged in the business of banking and brokerage?

A. Twenty-odd years.

89 Q. During the time of your occupation as such have you or not had a pretty general acquaintace with the business men engaged in brokerage?

A. Yes, sir; I know nearly everybody in town. I was born and raised here.

Q. Did you ever, in 1874 or '5 or '6, know any one in the city of Louisville engaged in the business of money or stock brokerage by the name of J. William Anderson?

A. No, sir.

Q. Did you ever hear of such person?

A. No, sir.

Q. Had there been such a person engaged in business with an office as a broker in this city would you or would you not have known of his existence?

A. I should think so. We have frequent intercourse and trade with one another nearly every day.

Q. If there had been such a man you would have known of it?

A. I should think so, unless he was here for only a day or two.

Q. Have you been requested to direct your recollection particularly to this point and to refresh your memory, if possible, as to the existence of such person?

A. Mr. Barrett asked me this morning if I knew of such a person. I have thought of it, and I know no such person.

Cross-examination.

By Mr. REED:

Q. Is it possible that there might have been a street broker—a man having no office—in that business in the city of Louisville and you not know it?

A. I do not think there could be, because if he came here a stranger he would not know what to do with anything that was given to him and he would be apt to come to us to sell it for him. He would not know to whom to offer securities.

Q. Do you know of any business man of that name in the city?

A. No, sir; I used to know William Anderson. I think his name was William J. Anderson, a brother of Dunning Anderson. I do not think he has lived here for four or five years.

Redirect examination.

By Mr. BROWNE:

Q. What was the business of William J. Anderson?
A. I am not positive that his name was William J.; I think it was. He was in the tobacco business, and afterwards, I think,
90 was engaged up here at the head of Main street in making iron mantels, coffins, etc.
Q. Where did he go from here?
A. To St. Louis. He has a brother, Dunning Anderson.

Recross-examination.

By Mr. REED:

Q. Do you know where he is now?
A. You mean William J. Anderson? I think he is in St. Louis. I do not know that his name is William J., but I think it is.

JOHN W. GREEN, a witness produced on behalf of the complainants, being sworn and examined, deposes as follows:

Direct examination.

By Mr. BROWNE:

Q. Where do you reside?
A. In Louisville.
Q. What is your occupation?
A. A broker—stock and bond broker.
Q. How long have you been engaged in that business?
A. Since 1865.
Q. During that time have you had a pretty general acquaintance with persons engaged in the business of brokerage?
A. Yes, sir.
Q. Did you at any time, say since 1870, know in the city of Louisville a man by the name of J. William Anderson, as a broker?
A. No, sir.
Q. Did you ever hear of such a man?
A. I never have, except that once before some one asked me that same question—I don't know whether it was Mr. Barrett or who it was asked me—by way of inquiry.
Q. If there had been such a man engaged in the business of money, or stock, or bond, or street brokerage during that time in the city of Louisville do you think it likely that you would have known him?
A. If he had been in business I would have known him.
Q. If he had had an office would you be likely to know him?
A. I have tried to refresh my recollection, and I have inquired of other brokers to know if they remembered any such man. They all state there had never been such a man here.

Cross-examination.

By Mr. REED:

Q. Did you know any man of that name in the city?
91 A. No, sir; I have not known any such man.
Q. Any man by the name of William J. Anderson?
A. No, sir. The only man by the name of Anderson who has ever done anything in the brokerage business is a man by the name of Lawrence Anderson.

By Mr. BROWNE:

Q. When was he in the city of Louisville?
A. Well, it was along about 1869.
Q. Where is he now?
A. He lives here still. He is ticket agent, I think, at the Louisville & Nashville railroad.

By Mr. REED:

Q. When you speak of brokers you mean men engaged in the same business as yourself—stock or bond brokers?
A. Yes, sir.

THOMAS MAIZE, a witness produced on behalf of the complainants, being sworn and examined, deposed as follows:

Direct examination.

By Mr. BROWNE:

Q. Where do you reside?
A. At the Gault House, in the city of Louisville.
Q. What is your occupation?
A. Stock, bond, and money broker.
Q. How long have you been engaged in that business?
A. About fifteen years; in the city of Louisville all the time.
Q. Have you during that time known any stock, bond, or money broker by the name of J. William Anderson?
A. No, sir; I have no recollection of any person of that name engaged in that business.
Q. Was your business and intercourse with other brokers such as to render it probable that you would have known him if such a man had been here?
A. Yes, sir. I have been on the street regularly every day, and we have dealings with all the brokers who have been in that business. I don't think there could have been such a broker with an office here. I would have known him, unless he was here for merely a day or two.

92 Cross-examination.

By Mr. REED:

Q. Was there any broker by the name of Anderson?

A. Not in that line of business—stock, bond, or money brokers' business. There might have been in the commercial brokers' line.

Q. May there not have been a real estate agent or dealer in real estate securities and you not know him?

A. Yes, sir; there might be some person transacting business in that way and I not know it.

Redirect examination.

By Mr. BROWNE:

Q. By commercial brokers do you mean tobacco men?

A. I mean persons who deal in produce, such as bacon, lard, tobacco, etc.

Recross-examination.

By Mr. REED:

Q. Do you know anybody of that name in the city of Louisville—William Anderson or William J. Anderson?

A. I do not; none at all in the last ten years.

(Witness continuing:) The books of the sinking-fund commissioner would show whether any such man had a license or not. A broker has to pay licenses to the State and also to the city. If he was a broker here he would have to take out a license. City license is paid to the sinking-fund commissioner, State license to the county clerk's office.

Counsel for plaintiffs announces that he has nothing more at present to offer.

Adjourned.

I, William Scott, the examiner appointed by the court in the above case, do hereby certify that the foregoing is a correct reproduction and statement of the testimony of the witnesses above named taken before me as such examiner, in the city of Louisville, in the dates hereinbefore set forth, this transcript being now prepared, at the request of counsel, from the original short-hand notes of the examiner for the reason that the testimony as hitherto filed by the examiner cannot now be found.

WILLIAM SCOTT, *Examiner.*

Pittsburgh, March 5, 1885.

93 In the District Court of the United States for the Western District of Pennsylvania.

JOHN F. DRAVO and ROBERT ARTHURS, Assignees in Bankruptcy of John Dippold & Sons,
versus
PHILIP FABEL & KATE FABEL, His Wife; JOHN DIPPOLD & NANNIE DIPPOLD, His Wife.

No. 4. October, 1879. In Equity.

Pursuant to notice the examiner appointed by the court met the

parties at the office of Knox & Reed, 60 Grant street, Pittsburgh, Thursday, March 4th, 1880, at one o'clock p. m., for the purpose of proceeding with the testimony offered in behalf of complainants.

Appearances: Mr. D. T. Watson, for complainants; Mr. H. W. Weir, for Dippold and wife; Messrs. Knox & Reed, for Fabel and wife.

JOHN DIPPOLD called by complainants as for cross-examination and sworn.

By Mr. WATSON:

Q. Where do you live?
A. Down at Baden, Beaver county.
Q. On what place are you living?
A. I live on the place that Fable owns.
Q. The place that you conveyed to Fable in 1876?
A. Yes, sir.
Q. How long have you been living on that same place?
A. Now, I could not actually tell you how long. It is a good many years.
Q. Give us your best recollection as to the year you went there.
A. I could not tell that. In fact, could not tell what time I went there.
Q. Before the war?
A. No; it was in the war times.
Q. Some time between 1860 and 1866 that you went there?
A. I must have been there that time. I think it was '61 or '62; can't tell now; can't say without I would look at the deed.
Q. What business were you engaged in when you went there?
94 A. I was in the steamboat business.
Q. In the coal business, too?
A. Yes, sir.
Q. What was the firm that you were connected with then?
A. I think it was John McDonald; could not say for sure; John McDonald and Dave was with me. I don't know whether it was that time he was in yet.
Q. What was the name?
A. Dippold & McDonald.
Q. How long did the firm carry on business in that name?
A. Well, we carried it on till we quit. I don't know how long it was. I bought McDonald out.
Q. When?
A. Can't tell you what year.
Q. Before 1870?
A. I think it was. I don't think McDonald was in with me any more when we moved down there; think it was just myself when we moved down there, in 1862.
Q. How long did you carry on business alone?
A. I carried it on for a good while alone. How many years I can't tell.
Q. Whom did you first take in with you?

A. My sons.
Q. What son?
A. First I took in Fred.; then he went out, and then I was by myself again three months.
Q. Then whom did you take in?
A. Then I took my two sons in after that—John and Martin—in the Tigress steamboat.
Q. When did you first take Fred. into partnership?
A. That was first in the Tigress—when we bought the Tigress; can't tell what year.
Q. Were you in the coal business then?
A. Yes, sir.
Q. Did you take Fred. into partnership in the coal business?
A. Just in the steamboat and barges, not in the coal works. I never had anybody in the coal works. I had partners before, but I bought them all out.
Q. How long did Fred. stay with you?
A. Not more than three months.
Q. What did he do?
A. He was captain and pilot of the boat.
Q. Did he contribute any money to the assets of the firm?
A. Yes, sir.
Q. What was it?
95 A. I couldn't tell you. I paid him his money back; couldn't tell you what he contributed.
Q. Have you any papers to show it?
A. No, sir.
Q. What year did he go out of the firm?
A. I couldn't tell you. That is not in my power.
Q. Was it in 1870 or after?
A. When we bought the Tigress—it was not long after—he went out of it. I can't tell you whether that was before or after 1870—it was before 1870; it was long before 1870.
Q. Was Fred. ever in partnership with you again?
A. Yes; when we built the John Dippold.
Q. Then he went into partnership in what?
A. The steamboat John Dippold and barges.
Q. What year was that?
A. I don't know what year it was. It was when we built the steamboat; I think in 1871 or so.

Mr. WEIR: We object to all the foregoing testimony, except the introductory part, as irrelevant and incompetent to the issue involved.

Q. What year was the John Dippold built?

Objected to by Mr. Weir as irrelevant and incompetent, and the witness instructed not to answer.
Last question again put by the examiner.

A. I decline to answer the question, under the advice of counsel.
Q. Who were engaged with you in building the John Dippold?

Objected to as irrelevant and incompetent, and under advice of counsel witness declines to answer.

Q. Was the firm of John Dippold & Sons in existence at the time this steamboat was built?

Objected to as incompetent and irrelevant, and under advice of counsel witness declines to answer.

Q. When was the firm of John Dippold & Sons formed?

96 Objected to as irrelevant and incompetent, and under advice of counsel witness declines to answer.

Q. Did the firm of John Dippold & Sons build the steamboat?

Objected to as irrelevant and incompetent, and under advice of counsel witness declines to answer.

Q. Who were the members that composed the firm of John Dippold & Sons?

Objected to as irrelevant and incompetent, and under advice of counsel witness declines to answer.

Q. What business did the firm of John Dippold & Sons carry on?

Objected to as incompetent and irrelevant, and under advice of counsel witness declines to answer.

Q. At the time of filing the petition in bankruptcy who composed the firm of John Dippold & Sons?

Objected to as irrelevant and incompetent, and under advice of counsel witness declines to answer.

Q. Was the firm of John Dippold & Sons largely engaged in business for, say, three years preceding the filing of the petition in bankruptcy, and did they carry on business in Pittsburgh?

Objected to as irrelevant and incompetent, and under advice of counsel witness declines to answer.

Q. Were you a member of the firm of John Dippold & Sons?

Objected to as incompetent and irrelevant, and under advice of counsel witness declines to answer.

Q. Was the firm of John Dippold & Sons, for two or three years prior to the adjudication in bankruptcy, large borrowers at the banks in Pittsburgh and Allegheny?

Objected to as irrelevant and incompetent, and under advice of counsel witness declines to answer.

97 Q. Were you, as a member of the firm of John Dippold & Sons, a large borrower of money from the banks in the city of Pittsburgh and Allegheny for two years prior and up to the time of the adjudication in bankruptcy?

Objected to as incompetent and irrelevant, and under advice of counsel witness declines to answer.

Q. Were the firm of John Dippold & Sons carrying a large amount of negotiable paper for, say, two years prior to and up to the time of filing of the petition in bankruptcy?

Objected to as irrelevant and incompetent, and under advice of counsel witness declines to answer.

Q. Were you, as a member of the firm of John Dippold & Sons, in connection with the copartners in that firm, engaged largely in carrying negotiable paper in the different banks of the cities of Pittsburgh and Allegheny for two years prior to and up to the time of filing the petition in bankruptcy?

Objected to as incompetent and irrelevant, and under advice of counsel witness declines to answer.

Q. What relation to you is Philip Fable?
A. He is my son-in-law.
Q. When did he marry your daughter?
A. I think it was in 1874 or 1875; cannot remember now.
Q. Were you connected with him in business prior to the marriage of your daughter?
A. No, sir; not at all.
Q. Were you ever connected with him in business after the marriage of your daughter?
A. No, sir.
Q. He had no connection with you in your business either before or after the marriage of your daughter?
A. No, sir.
Q. How long had you known him prior to the marriage of your daughter?
A. Well, I knew him before he was married.
Q. How long?
A. Well, not more than about a year before.
Q. Had you been borrowing money from him prior to the marriage of your daughter?
A. I didn't borrow any money before he was married.
98 Q. Did you borrow any money from him before the marriage of your daughter?
A. I did after he was married—after I needed money.
Q. Did you borrow it before?
A. No; not before.
Q. What amount of money did you borrow from him after the marriage?
A. I borrowed several times and paid it back, and at last I borrowed as much as $10,000; not at one time; at several times to the amount of $10,000. I paid some back and then borrowed it again when I needed it.
Q. How much did you borrow and pay back?
A. Couldn't tell you how much I paid back; I know it was $10,000 I owed him; can't tell how much I borrowed and paid back. Sometimes I borrowed $1,000, or $2,000, or $3,000 and paid it back when I sold the coal.

Q. How much was it that you paid him back?

A. I don't know now. I have no books that I kept. Sometimes I needed money when I was down there, and I went in and got it and sold the coal and paid it back again. Most all the coal men do that.

Q. Did you ever give him any due bill or promissory note or evidence of indebtedness?

A. No, sir; he just gave me the money and I paid it right back.

Q. Do I understand you to say that he kept no memorandum at all of the amount you borrowed from him?

A. No, sir.

Q. You gave him no due bill or any evidence of indebtedness?

A. No, sir; I never gave him a due bill; didn't give him any note.

Q. From whom did you get the money?

A. Sometimes from the old man, when he was there, and other times from the son, Philip.

Q. Which did you get the most from?

A. Most from Philip.

Q. How did he pay it to you?

A. He paid it to me; had the money always in the safe; paid it in money. I never knew him to give me a check.

Q. What sized bills would he give it to you in?

A. Well, all kinds.

Q. Did he ever give you a $1,000 bill?

A. No, sir; not down in Louisville.

Q. What was the largest amount that you borrowed from him at any one time?

A. Well, from $1,000 to $3,000 or $4,000; sometimes as high as $4,000.

Q. Did you pay him any interest for it?

99 A. It never was very long, and when we made a sale he never charged me any interest.

Q. How long was the longest that you had any sum of money from him?

A. Can't tell how long. I suppose I had some as long as thirty days; don't know whether I had any as long as sixty days; can't tell. I think I had some of it as long as thirty days.

Q. Who was present at any time that Philip Fabel paid you money?

A. Can't tell; never took notice; can't remember now if any person was present.

Q. Don't remember whether any person was present or not?

A. I suppose there was some there, but I can't remember; it is too long ago.

Q. For how long a time did this continue?

A. Well, from 1875 to 1876, when I wanted more money.

Q. Where did you deposit that money?

A. I would pay it out.

Q. Did you deposit it any place?

A. No, sir.

Q. What did you pay it out for?

A. I had to pay some notes and some for the steamboat, you know. We always have to pay a big lot of money.

Q. Who did you pay when in Louisville any money that you borrowed from Philip Fable?

A. Couldn't tell you; mostly gave it to the steamboat—what they needed; some I brought home.

Q. Who on the steamboat would you give the money to?

A. The captain.

Q. Who was the captain?

A. John Dippold. I always had to get them money.

Q. Did you keep no memorandum at all of the amount of money you got from Philip Fable?

A. I never kept any.

Q. Did any person else keep it?

A. I believe Jacob kept some of it—the book-keeper. He was not with me in Louisville.

Q. When did you give him the entry?

A. When I came home. I don't suppose he entered it to Philip Fable's credit; can't tell you how he entered it in the books. I told him I borrowed the money from Fable.

Q. Was there any account in your books with Fable or his father?

A. I can't tell you. There was no account for the old man, I know; can't tell you whether there was any with Philip.

Q. Did you ever talk with your book-keeper about keeping such an account?

100 A. No, sir; generally I kept in my head everything, most always.

Q. Kept all your accounts with Philip Fable with reference to borrowing this money in your head?

A. Yes; so far as I know, there was no entries made in the books concerning it.

Q. When you paid Fable back how would you pay him?

A. I paid him the money. When I received the money for the coal I gave it to him; don't know that I ever gave him a check; don't remember that I did. I kept no bank account in Louisville. My firm kept a bank account there. Dippold & Sons was the firm in Louisville. Charlie Lander and my son Martin attended to the business in Louisville.

Q. Did they keep an account in Louisville for the firm of Dippold & Sons?

A. They kept an account for their own business.

Q. What bank did they keep it in?

A. Can't tell you; I think in a couple of banks; don't know in which.

Q. You can't remember the name of the bank?

A. I think Kreeger's.

Q. A private bank?

A. Yes; I think he did some business there.

Q. Did you hand the money you got from Fable to John Dippold & Sons?

A. No, sir.

Q. Did you give it to either of the partners in Louisville who were attending to the business?

A. No, sir; I kept that for myself.

Q. Did you report to your partners there the amount that you borrowed?

A. No, sir; I never did.

Q. For whom did you borrow that money—yourself or Dippold & Sons?

A. For Dippold & Sons, but I had to furnish everything myself.

Q. Were you the managing partner of the firm?

A. Yes, sir.

Q. Did you and Fable ever have a settlement as to the balance that you owed him?

A. Not before I wanted more money, and he said he would not give me any more before I would sell him the property.

Q. Where was that?

A. In his office, in Louisville.

Q. Who was present at that time?

A. Nobody there; just me and him.

101 Q. Did he have a statement there of the money you owed him?

A. I don't know.

Q. Did he produce any statement?

A. No, sir; just always took my word, you know.

Q. How did you arrive at the balance that was due him?

A. I knowed it in my head. I used to have a good memory. Now it is different.

Q. Did he produce any books at all showing the account?

A. Not that I saw; no, sir.

Q. Did he have any note or due bill of yours?

A. Not as I know.

Q. Never gave him any evidence of indebtedness?

A. Not to my memory.

Q. How long had that $10,000 been owing to him?

A. Some of it was a little while and some not.

Q. How much was the longest of it?

A. I can't tell you.

Q. Thirty days?

A. I suppose.

Q. Sixty days?

A. I can't tell you.

Q. Any of it ninety days?

A. I can't tell you; no, sir.

Q. Can't tell whether part of it was 90 days or not?

A. No, sir; I can't.

Q. Do you remember, then, the different dates when you got the different amounts?

A. No, sir.

Q. When you paid Fable back at times did you pay him all the money you owed him at the time or did you pay him in dribs?

A. Generally I paid him exactly what it was; that was at first, but afterwards I couldn't raise it.

Q. Do you remember any specific time you ever paid him $1,000?

A. No, sir.

Q. Do you remember when you paid him any given amount?

A. No, sir; I could not tell.

Q. How much of the time were you in Louisville?

A. I was there very often. Just like whenever a steamboat goes out I went out selling coal to Cincinnati and Louisville.

Q. At the settlement that you said you had with Philip Fable was his father present?

A. No, sir; he was not.

Q. Was any persons present there in the store?

A. I can't tell whether there was anybody there or not.

Q. What was the amount, then, that you found you owed Fable?

102 A. I owed him $10,000, just even.

Q. At that time what was said with reference to that $10,000?

A. Well, I wanted some more money, and he said he would give me no more without I sell him the property.

Q. Did he specify what property?

A. Yes, I specified what property I had down there—the farm and the home.

Q. What amount of money did you ask him to lend you at that time?

A. I wanted $28,000. I wanted to make it just even $28,000.

Q. Did you want Philip Fable to lend you the balance to make $28,000?

A. Yes, sir. I wanted $10,000 more, and he said he would not do it without I would sell him the property.

Q. How long did you want to borrow the $10,000 for?

A. I would like to have it then for a while; didn't know how long.

Q. Had Fable ever asked you before for security?

A. No, sir; not before 1876.

Q. You went down there, you say, asking him to lend you $10,000 more?

A. Yes, sir.

Q. And you don't remember the time for which you asked him to lend it?

A. I don't remember the time.

Q. What year was that?

A. 1876; can't tell you what time in 1876.

Q. Was it in winter or spring or summer?

A. I think it was in the spring.

Q. Philip said to you that he wouldn't lend you any more money unless you sold him the farm?

A. Yes, sir.

Q. Did you understand that you were to sell him the farm outright?

A. No, sir; to sell it to him and give him the deed for it.

Q. How did you come to fix on the sum of twenty-eight thousand dollars?

A. Because he said he would not take part of it. He wanted the whole property.

Q. How did you fix $28,000?

A. I fixed this what I paid for it.

Q. When you asked him to lend you $10,000 and he said, No, I won't do it unless you sell me the farm and the home, who was it fixed the $28,000?

A. I said that it was what it cost me, and I would sell it for that.

Q. Did you agree then, at that time, to sell him the farm?

A. No, sir; not at that time. We didn't agree. I went
103 home and he sent to Sharp McDonald, and Sharp acted for me.

Q. When you left Louisville you hadn't agreed with him at all about giving him the deed?

A. No, sir; he said he would have to see his father first before he would do it.

Q. Did you wait for him to see his father?

A. No, sir; I went home.

Q. When did you leave Louisville after that?

A. I could not tell you when it was.

Q. There was no agreement made in Louisville?

A. No, sir; no agreement.

Q. When did you hear from him next?

A. He wrote to Sharp and Sharp came to me.

Q. What did Sharp say to you?

A. I don't know whether Sharp didn't go down and sell the property in Louisville; couldn't say for sure, but I think he did.

Q. I understand you to say Philip Fable wrote to Sharp McDonald after you came home and Sharp McDonald came to see you?

A. Yes, sir.

Q. Did Sharp show you the letter?

A. I don't know whether he did or not.

Q. He didn't give you the letter?

A. No, sir.

Q. What relation to you was Sharp McDonald then?

A. He used to be a son-in-law of mine.

Q. Do you know where that letter is?

A. No, sir; I didn't see the letter.

Q. How do you know he wrote one to Sharp?

A. That was what Sharp told me.

Q. Did Fable ever speak to you afterwards about writing that letter?

A. No, sir.

Q. When Sharp came to you what did you say to him?

A. I told him that the property cost me that much, and if he would give me that much money I would give him the deed.

Q. When did you hear from Fable next?

A. Sharp managed the whole of it. He said, "I got an answer from him and he will furnish the money."

Q. How long afterwards did he say he got the answer?

A. I can't tell.

Q. How often did Sharp see you about it?

A. He didn't see me often. I can't tell.

Q. How long was it after Sharp first said he had heard from him that he came and said he would buy it?

A. I can't tell.

104 Q. When Sharp came to you the second time where did you see him?

A. In my office, up in Pittsburgh.

Q. You were both in the same office?

A. Yes, sir.

Q. What did he agree upon then with you?

A. We agreed to give him the deed for it, and he would give me the money—$10,000 cash and balance in note.

Q. Who got the deeds drawn?

A. I think Sharp wrote it; can't say, but I think he did.

Q. Did you go to any lawyer to get the deeds written?

A. Well, we had this notary public. I think he wrote it.

Q. Did you go to any person to get him to write it?

A. No, sir; I didn't get anybody. I think Sharp wrote — himself; could not swear to it. I know he got the deeds made; I gave him my old deeds.

Q. Do you remember what time it was?

A. The deed will show; I can't remember.

Q. Do you remember whether it was in the spring or summer of 1876?

A. I couldn't swear that it was in the winter or spring; can't tell.

Q. When did you next see Philip Fable?

A. I saw him when he came up to Pittsburgh—up to Sharp McDonald's.

Q. Where did you see him?

A. He came down to my house first, and then we went up to Sharp McDonald's.

Q. Where were the deeds signed?

A. At Sharp McDonald's house.

Q. Who went up with you?

A. Me and my wife.

Q. Who was there?

A. There was nobody there except Sharp—and we were there.

Q. Was the notary public there?

A. Yes, sir.

Q. Was he there when you went there?

A. No; he came when we were there. After us he came down from Pittsburgh.

Q. Did any person else go up with you?

A. No; nobody there except Sharp. Philip Fable was not there.

Q. Wasn't he there at all that evening?

A. He wasn't there since me and my wife was there.

Q. He was not there when you signed the deed?
A. No, sir; not as I know.
Q. He was not there when your wife signed the deed?
105 A. No, sir.
Q. Who paid you the $10,000?
A. He paid me when he came—Philip Fable.
Q. When did he come?
A. The same evening or next day.
Q. Where did he pay you the money?
A. At Sharp McDonald's.
Q. Was it the same evening you signed the deed?
A. I can't tell you that now. It was the same evening or next day; can't tell which.
Q. You are pretty certain he was not there when the deeds were signed?
A. No, sir; he was not.
Q. Who took the deeds after they were signed?
A. Sharp kept them.
Q. You saw Philip Fable that evening or the next day at Sharp's house?
A. Yes; I can't tell exactly.
Q. What did Fable pay you when he saw you?
A. He paid me $10,000.
Q. How?
A. In currency.
Q. What sized bills?
A. Big bills; some $100 bills.
Q. How many big bills?
A. I think a couple of $1,000; some $500; I think there were some $100 bills.
Q. Were there any smaller bills than $100?
A. I think not.
Q. What did you do with the money?
A. I paid notes.
Q. What notes did you pay?
A. Well, I had lots of them to pay.
Q. Specify any one note that you paid.
A. Can't tell—I cannot.
Q. Did you deposit that money in bank?
A. I deposited some of it. I think I deposited some in the Tradesmen's National Bank, and some I paid right away.
Q. You got $10,000 from Fable?
A. Yes, sir.
Q. How soon after you got the money did you pay any notes with it?
A. I paid notes just as soon as I came uptown.
Q. The very same day or the next, did you?
A. I can't tell.
106 Q. Where did you pay the notes?
A. I don't know where. That is impossible for me to tell you, where I paid them.

Q. Can you tell me any one note that you paid?
A. I cannot do it.
Q. Can you tell me any one person that you paid any money to?
A. I can't tell who I paid it to.
Q. Can't tell any note or any person that you paid it to?
A. No, sir.
Q. How much money did you deposit in the Tradesmen's Bank?
A. I don't know. It was $2,000 or $2,500. I can't swear to that.
Q. How did you deposit it?
A. In money.
Q. What else did you get from Fable besides $10,000?
A. Notes.
Q. I understand you that the money you got you yourself paid out; did you?
A. Yes; I gave some to my son and he paid it out—that is, the book-keeper. I always gave the money to him. I paid many notes myself and I gave it to him and he paid notes. I paid some myself and Jacob paid some.
Q. What notes did Jacob pay?
A. I can't tell you.
Q. Did Jacob deposit any of that money in bank?
A. I can't tell you.
Q. The notes that you paid you paid in currency, did you?
A. Certainly.
Q. Can you think of any bank that you paid a note to?
A. I can't remember now. I have stated that over many times.
Q. Did you have any entries in the books of the notes that you paid?
A. I did not have any entries made. I told the book-keeper what I paid and he put it in the book.
Q. Did you lift the notes when you paid them?
A. I always lifted notes and gave them to him.
Q. How soon did you pay out the money—this last $10,000 that Fable paid you?
A. Can't tell you that; that is more than I would know now.
Q. Well, was it within a week after you got the money?
A. I suppose it was—one, two, or three.
Q. What did you do with the money?
A. If you have money and have notes to pay you certainly know what to do with it.
Q. Where did you keep the money in the meanwhile?
A. I kept it at home.
107 Q. Where did you keep it?
A. I have a safe at home.
Q. Was it customary for your firm to pay notes by cash or by check?
A. I paid them in cash and in checks.
Q. Was it customary for you to pay notes in cash?
A. It was customary whenever I had money to go and lift the notes.
Q. Was it customary for you to pay notes in cash?

A. Whenever I had cash I paid them in cash.

Q. Was it customary for you to keep a large amount of cash on hand?

A. When I had money I paid it. When I had notes coming up from below I put them in bank. When I had money I paid the notes with money.

Q. Was it customary for you to keep a large amount of cash on hand?

A. Not very; still, sometimes I had some money.

Q. How much did you generally keep on hand?

A. Sometimes $1,000 or so and sometimes none.

Q. Did you ever keep as high as $8,000 or $10,000 on hand?

A. I know the time when we kept a good deal more than that—$20,000, $30,000, $40,000 in cash.

Q. Where did you keep it?

A. At home; that was in the war times.

Q. Since the war times have you ever kept that large amount of money on hand?

A. Not since the war times, we have not.

Q. I ask you again, in order to enable you, if possible, to recall it, whether you can name a single note that you lifted with any of this money?

A. I cannot, without my book-keeper can. He would know it.

Q. Can you name a single bank to which you paid this money?

A. It is too long for me to remember such a thing.

Q. You can't remember it at all?

A. No, sir; I cannot any more. My memory used to be good, Mr. Watson, but since I was sick I lost it.

Q. Did you pay any of these notes that you mention that you did pay out of this $10,000—did you pay them at any banks in Pittsburgh or Allegheny?

A. I paid some money in banks or where it was in Allegheny or Pittsburgh. Whenever I had a note I went in and paid it.

Q. Did you pay any notes at any bank in Pittsburgh or Allegheny?

A. I told you I can't remember; can't remember whether I paid any of the notes at any bank.

108 Q. Those notes that Philip Fable gave you, were they secured in any way?

A. No, sir; they were just his own notes.

Q. Was there any agreement between you and Philip that you would be allowed to redeem the farm at any time?

A. Well, I wanted money, and there was writing from him if I can raise the money where I had a contract I would raise it, and I was to pay him the same money back if I could.

Q. Did he give you that writing?

A. I think he gave it to me, but I cannot find it any more. It was just a few words.

Q. What were the words in the writing?

A. It was just about that whenever I raise the money he will give me the farm back.

Q. When did he give you that writing?

A. When he was up.

Q. At the same time he paid you the $10,000?

A. Yes; it was after. It was not in Sharp's office. It was at home. I begged him, you know; he didn't want to do it.

Q. He wrote it at home and gave it to you?

A. Yes; it was just a small strip. I put it in the safe and never have found it since.

Q. He wrote it at your house and gave it to you?

A. Yes; I asked him, "Will you sell me the farm back if I am able to get the money?" He said, "Yes." I think the time was three years. He said two years.

Q. What did you do with the notes that he gave you?

A. His father discounted them. His father sent me word not to discount any notes of his, Fable's. Philip Fable's father wrote me a letter not to discount any notes of his.

Q. Where is that letter?

A. I don't know. I would not save such a letter as that. He said whenever I came down he wanted to discount the notes himself; that I should bring them along.

Q. You don't know where that letter is?

A. No, sir; I have tried many times, but could not find it any place.

Q. Was Philip Fable's father on those notes?

A. No, sir; just Philip's own notes.

Q. How long after that did you go down to Louisville?

A. I can't tell; maybe it was two or three weeks; can't tell you what time.

Q. When you went down there did you get the notes discounted?

A. He gave me the money. Philip gave me the money.

Q. How did he give it to you?

109 A. In currency—in cash.

Q. Did he give you a check?

A. No, sir; in currency.

Q. What amount of money did he give you?

A. I never knew him to give me a check of any kind.

Q. What amount of money did he give you for the eight thousand dollars?

A. I think he took out $400 of it.

Q. What kind of bills?

A. All kinds. I needed the money right in Louisville.

Q. You got $7,600 for the $8,000 notes?

A. Yes.

Q. What did you do with that money?

A. I took and paid some notes right away. I think I deposited some in bank; can't tell you what bank. I done all the business with the Tradesmen's and the Fifth National.

Q. Can you tell me any note that you paid with that $7,600?

A. No, sir; if anything was paid it ought to show on the book.

Q. Can you tell me any person or bank to whom you paid any portion of this $7,600?

A. I cannot.

Q. Do you think you deposited part of the $7,600 in the Tradesmen's?

A. I think in the Tradesmen's or the Fifth National; maybe; some of it. Some of it I used in paying notes. I never kept money over night. I used it to pay notes after I came to Pittsburgh, and some in Louisville. Sometimes when we have boats there we have to pay out $3,000 or $4,000.

Q. Do you usually pay out $3,000 or $4,000 in cash?

A. Many a time.

Q. Do you take any receipt for it?

A. I suppose so.

Q. Did you take receipts for this $7,600 you paid out?

A. We didn't pay it out to one man; to different men.

Q. Did you take any receipt?

A. Jacob did; I did not.

Q. Was Jacob present when you paid out this $7,600?

A. I didn't pay it in one day. I paid it out to different men.

Q. Was he present when you paid it out?

A. I suppose he was there. A man would come in and say he wanted his money, and Jacob took a receipt.

Q. Was Jacob present at the time you paid out this $7,600?

A. I didn't pay it all out in one day.

Q. Was he present at the different times you paid out different sums?

110 A. He was present always when I paid money. A man would come in, and I would say he must wait until the bookkeeper comes; but sometimes a steamboat comes in and you have to give out $1,000.

Q. Did Jacob take receipts for all of the money you paid out of this $7,600?

A. I think he did.

Q. Did he enter it in the books?

A. I can't tell you; I never looked; I didn't understand the books.

Q. You can't name a single person or firm or bank to whom you paid any of this $7,600?

A. I can't remember. Whenever I paid a note I gave it to Jake, and he put it in the book.

Q. Now, this $10,000 that you got from Fable at Sharp's house and the $7,600 you got from him in Louisville—do I understand you that you borrowed all that for the firm of Dippold & Sons?

A. Certainly. I used some for Dippold and McDonald, too.

Q. How much?

A. I can't tell you. I used a good deal for them; can't tell how much.

Q. What notes were they that you paid with this money?

A. I can't tell you whether it was all for Dippold & Sons and for Dippold & McDonald.

Q. Did you pay any notes of Dippold & Sons with any part of this $7,600?

A. I paid some.

Q. Did you pay any notes of Dippold & McDonald?
A. I paid some; I can't tell what notes.
Q. Who was partners in Dippold & McDonald?
A. It was nobody else but me and Sharp.
Q. Did you pay yourself the notes of Dippold & McDonald?
A. I paid that money.
Q. Who kept the books?
A. Jacob kept both sets of books.
Q. Can you specify any person or bank to whom you paid any part of the Dippold & McDonald notes?
A. No, sir. We paid notes that were brought into the office.
Q. I understand you to say that all the $17,600 you did pay out was for the debts of Dippold & Sons or Dippold & McDonald?
A. Yes; one of the two.
Q. After you got these notes discounted and got the $7,600 when did you next see Philip Fable?
A. I suppose I saw him when I came down, but can't tell you when. When I went to Louisville I certainly saw him. His office is near the Gault House, where I stop.
Q. Did you stay at Philip's house?
111 A. Very seldom; generally at the Gault House. The coal men all go there.
Q. How long did these different notes that Phillip Fable gave you run?
A. Well, in fact I couldn't tell you no more now.
Q. How many were there?
A. There was four, I think. I think you will find that in our statement.
Q. Were they entered on your books?
A. No, sir; they were not entered. That was my own individual business.
Q. Did you keep any books?
A. No, sir.
Q. Well, you borrowed the money for Dippold & Sons and Dippold & McDonald?
A. Yes, sir.
Q. After you borrowed this money for Dippold & Sons and Dippold & McDonald did you get Jacob to give you credit on your accounts with the different firms?
A. I suppose he did. I told him to give me credit; can't tell whether he did or not.
Q. Did you ever pay any of this $28,000 back?
A. Never a cent.
Q. Ever pay any interest on it?
A. No, sir; didn't pay any interest.
Q. Before Fable told you that he would not lend you any more money unless you sold him the farm had Fable been after you for security?
A. No, sir; not before. When I asked him for more money, then he said he would not give me any more without I would sell him the farm.

Q. What was the amount of notes outstanding when you borrowed the $17,600?

A. That I cannot tell you.

Q. Who paid the notary for drawing the deeds and taking the acknowledgment?

A. That I cannot tell you.

Q. Did you pay him?

A. I don't know whether I paid it or whether Sharp did; can't swear to it.

Q. Did you give Sharp any of the money?

A. No, sir; not a dollar; no, sir.

Q. Sharp never got a dollar of this $17,600 on one account or another?

A. No, sir; not without I paid notes. I never paid one dollar of it to Sharp for any account whatever. I may have paid notes
112 of Dippold & McDonald. I didn't pay any of the money to Sharp. I didn't pay any of the money to him for the purpose of paying notes of Dippold & McDonald.

Q. I understand you to say that you had nothing to do with the preparation of this deed; that you gave your old deeds to Sharp, and Sharp got the person to draw the deed for you?

A. I couldn't swear to that. I think Sharp went down to Louisville and sold the property. I think my son-in-law wrote him a letter.

Q. Do I understand that you didn't have any person draw the deeds, and that you gave your old deeds to Sharp, and that he had them drawn?

A. Yes; I gave them to Sharp.

Q. I understand you to say that Smith, the notary public, went down to take the acknowledgement. Who got him to go down?

A. I think Sharp got him.

Q. How long was Philip Fable in town at that time? Do you remember?

A. I could not tell.

Q. Who did he stay with?

A. He staid over night with me.

Q. Was he with you more than one night?

A. Just one night; not more. He came in the evening, and we went up that evening—me and Philip. We took the carriage and went up to Sharp's. No person else went up.

Q. When was it that your wife went up?

A. We went up with the cars. That was the day the deed was signed. We went up in the cars and went home in the cars.

Q. How far was it from where you lived to where Sharp lives?.

A. Seven miles.

Q. Philip Fable didn't go up with you the evening that you and your wife went up?

A. No; me and my wife went up in the morning and went home after dinner.

Q. Did you sign the deeds in the morning?

A. No; I think it was after dinner we signed them. It was after the notary public came.

Q. Was it in the daytime?

A. Yes; it was after dinner, I say. I can't tell you what time it was. I know we had our dinner. I suppose we had dinner about 12.

Q. After that the notary public came, and you acknowledged the deed?

A. Yes, sir.

Q. And you and your wife went home the same afternoon?

A. Yes, sir.

Q. That evening, do I understand you, you and Philip went up in the carriage?

113 A. I don't know whether it was that day or the next day; I know it was shortly after.

Q. Do you know where the deeds were after you got the money from Philip Fable?

A. He took the deeds; that's all I know.

Q. You don't know where they were?

A. No, sir; I had nothing to do with the deeds.

Q. At that time was there not a large amount of Dippold & Sons' paper out?

A. There was some outstanding, I suppose, like any coal or business man.

Q. Were you at that time indebted to the Tradesmen's Bank?

A. I suppose so.

Q. Were you indebted to other banks here in Pittsburgh, too?

A. I suppose we was; yes.

Q. Do you remember, after executing the deeds, that you informed any of the banks that you had sold your property?

A. They never asked me.

Q. Were you not questioned about it at all?

A. No, sir.

Q. Did you tell any person?

A. No, sir.

Q. You know Cyrus Clarke, cashier of the Tradesmen's Bank?

A. Yes, sir.

Q. Did you have any conversation with him about the property?

A. Not as I know of; no conversation about the property.

Q. What conversation did you have then?

A. I can't tell you any conversation at all that time.

Q. Did you have any conversation with Cyrus Clarke after you made the deeds, before the petition in bankruptcy was filed?

A. Cyrus Clarke wanted a mortgage on the property, and I said I could not give it. I said if I gave a mortgage I couldn't get any credit any more.

Q. Did he ask you then if you had sold the farm?

A. No, sir:

Q. Did you tell him that you had made a deed to Fable?

A. No, sir.

Q. Did you at that time tell him that you still owned the farm?

A. No, sir; I did not.

Q. You remember the conversation, do you?

A. Yes; I remember very well. It was in the office of the Tradesmen's Bank; don't know anybody who was present. Alexander Bradley was not there as I know of. Clarke and me was there. He never asked me about the property or anything. He only wanted some security.

114 Q. You told him if you gave a mortgage it would destroy your credit?

A. Yes; I told him if I can I will. I offered him a mortgage on the coal property.

Q. Did you ever tell any person about your owning this property?

A. Before that I owned it—before I sold it I owned it.

Q. Your creditors knew that you owned the property before you sold it to Philip Fable?

A. I don't understand that question.

Q. Before you sold the farm to Philip Fable your creditors and the creditors of Dippold & Sons here knew that you owned that farm, didn't they?

A. I don't know whether they knew it or not; never conversed with any of them about it; not one of them that I know of.

Q. Do you remember when Dippold & Sons opened an account with the Fifth National Bank?

A. I can't tell when. We did open an account.

Q. Do you remember at the time you opened that account that you stated you owned this property?

A. Not that I remember of.

Q. Didn't they send to have the title examined to see whether you did own it and whether it was free from encumbrances when the firm of Dippold & Sons opened this account?

Mr. WEIR: All the foregoing questions in relation to Mr. Dippold's declaration as to ownership of the farm in the absence of Philip Fable are objected to.

A. I know they didn't ask me whether I owned that farm or not. That I can swear to.

Q. And at or about the time you opened your account with the Fifth National Bank you did not state to any officer of the bank that you owned that property?

A. Not as I know; not to my memory.

Q. Do you swear you did or did not?

A. I could not say that ever I remember of their asking me.

Q. At the time you got the $7,600 from Philip Fable for the notes did he get that money out of the bank or did he have it in the office?

A. In the office; I can't remember whether we went to bank and got it or not.

Q. Did you wait for him in the office to go and draw the money?

115 A. No, indeed; I did not. He handed me the money; I

left the notes there when I came there, and I stayed there. He trusted me and I always trusted him.

Q. Do I understand you to say that you took any portion of that $7,600 to pay any note in Louisville?

A. No, sir. Sometimes a steamboat goes below, and I had to give the boat $1,000, sometimes $2,000 or $3,000, if they go below Louisville.

Q. Did you give any portion of this $7,600 to any person in Louisville?

A. I can't remember. I paid some; where I paid it I can't remember. I think I paid some of it in Louisville, but can't say who to.

Q. Do you know how much?

A. No, sir; I don't know how much.

Cross-examined.

Mr. WEIR: We have nothing.

Mrs. NANNIE DIPPOLD called by complainants as for cross-examination.

Mr. WATSON: Mrs. Nannie Dippold, one of the respondents, being present under service of subpœna upon her, I now ask the examiner to swear her as for cross-examination.

Mr. WEIR: As counsel for John Dippold I object on the ground that she is the wife of John Dippold and incompetent to testify against her husband.

By Mr. REED: We object in behalf of Mr. Fable, because she is only a nominal party.

Mrs. NANNIE DIPPOLD sworn.

Mr. Weir, as counsel for John Dippold, the husband of witness, instructs the witness not to answer until the question of her competency is determined by the court.

116 Mr. Watson, counsel for complainants, asks Mr. Weir whether he gives the broad instruction to the witness to answer no questions whatever, or whether he intends to limit himself to such questions put, if any, as seem to be incompetent to this witness.

Mr. WEIR: Complainants in their bill allege conspiracy and fraud on the part of her husband, and calling the witness as for cross-examination her competency is objected to upon the ground that she is the wife of the party against whom she is called to testify, and the witness is therefore instructed to answer no questions until the question of her competency is determined by the court.

Mr. WATSON: I now offer to interrogate witness with reference to the alleged execution by her of a certain deed purporting to be from her and her husband to Philip Fable.

Mr. WEIR: In reply to this I instruct the witness not to answer any questions until the question of her competency is determined by the court.

Complainants' counsel asks the examiner to prepare a separate certificate presenting the questions as to the relevancy and competency of evidence raised in the examination of John Dippold and Mrs. Nannie Dippold.

Complainants' counsel asks for the production of the deed from John Dippold and wife to Philip Fable.

Adjourned.

WILLIAM SCOTT, *Examiner.*

117 In the District Court of the United States for the Western District of Pennsylvania.

DRAVO & ARTHURS, Assignees, &c., *vs.* PHILIP FABLE *et al.* } No. 4. October Term, 1879. In Equity.

And now, May 5th, 1880, it is agreed that the testimony to be taken in the above case at Louisville, Kentucky, at a hearing to be held Friday, May 7, 1880, and, if necessary upon subsequent days by adjournments, shall be reduced to writing by a stenographer to be agreed upon by counsel, without the presence of the examiner appointed by the court, and that the testimony so taken shall be filed in court by said examiner with the other testimony taken by him.

D. T. WATSON,
Attorney for Complainants.
KNOX & REED,
Attorneys for P. Fable and Wife.

Notice.

The defendant, Philip Fable, will take notice that the plaintiffs will proceed to take the deposition- of sundry persons at the office of Barnet & Brown, 10 Centre street, Louisville, Kentucky, between the hours of 10 o'clock a. m. and 5 o'clock p. m., on the 7th day of May, 1880. Said depositions will be read on behalf of the plaintiff in the above-styled cause on the hearing thereof, and said depositions will be adjourned from day to day until the same are completed.

DRAVO & ARTHURS,
Assignees, &c.,
By BARNET & BROWN,
Their Attorneys.

May 7th, 1880.

On original is endorsed the proof of service of foregoing order.
(Caption to original depositions here omitted.)

Deposition of J. H. Lindenberger.

J. H. LINDENBERGER, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainant-, testified as follows:

Q. State your name, residence, and occupation.

A. J. H. Lindenberger; reside in Louisville, Ky.; am cashier of the Merchants' National Bank of Louisville.

118 Q. How long have you been cashier of said bank?

A. I have been its cashier since it commenced business under the national bank act, in August, 1874. This bank is a continuation of the Merchants' Bank of Kentucky, of which I was also cashier from about the time of its organization, in 1861.

Q. State whether or not Frederick Fable ever deposited at your bank under either organization.

A. He never was a depositor with the bank under either organization.

Q. State whether or not he was a stockholder in either of said banks.

A. He was a stockholder in the Merchants' Bank of Kentucky to the extent of nine shares, of the par value of twenty-five (25) dollars each. He continued to own that interest until the 30th of December, 1874, when he sold and transferred it, and was not thereafter a stockholder in either that bank or the Merchants' National Bank of Louisville, which succeeded thereto.

Q. When did he sell and transfer this stock?

A. On the 30th of December, 1874.

Q. Has he since that time owned any stock in the bank you are now connected with?

A. He has not.

J. H. LINDENBERGER.

Deposition of L. G. Patton.

L. G. PATTON, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainant-, testified as follows:

Q. State your name, residence, and occupation.

A. G. L. Patton; reside in Louisville, Ky.; I have been book-keeper at the Falls City Tobacco Bank for about seven years.

Q. How long have you been the general book-keeper of that bank?

A. I have been connected with that bank as book-keeper or teller for about ten years.

Q. State whether or not Frederick Fable is or ever was a stockholder in the Falls City Tobacco Bank, as far as you know.

A. He was not and is not now, so far as I know. For the past ten years, to my knowledge, he has held no stock in that bank.

Q. Could Frederick Fable have been a stockholder in your bank without its coming to your personal knowledge?

A. He could not, because the stock ledger would show if he ever owned or transferred any stock therein.

119 Q. State whether or not Frederick Fable ever deposited at your bank within the time you have been there.

A. He never has, to my knowledge, since I have been there.

L. G. PATTON.

Deposition of John G. Barrett.

JOHN G. BARRETT, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. John G. Barrett; reside in Jefferson county, Kentucky; am president of the Citizens' National Bank.

Q. How long have you been connected with the Citizens' National Bank?

A. Ever since its organization, about 1864, I have been its president. The Citizens' National Bank is the successor of the Citizens' Bank, a State organization. I have been either president or cashier of that since its organization, in 1864, up to the time of its conversion into a national bank.

Q. State whether or not Frederick Fable was a depositor in your bank either under the State organization or the national organization as a bank.

A. My recollection is that he never was either a depositor or stockholder in the bank. I am certain that he never was a stockholder in either bank, and I am positive he never had a deposit account there for the last eight years.

Q. Will you please state how many banking institutions there are in the city of Louisville, Ky.—how many incorporated institutions.

A. There are twenty-one incorporated banks in the city of Louisville, Ky.

Q. Please give the names, respectively, of those banks.

A. Bank of Kentucky, Bank of Louisville, Citizens' National Bank, Falls City Tobacco Bank, Farmers' and Drovers' Bank, First National Bank, Franklin Bank of Kentucky, German Bank, German Insurance Bank, German National Bank, German Security Bank, Kentucky National Bank, Louisville Banking Company, Louisville City National Bank, Masonic Savings Bank, Merchants' National Bank, People's Bank of Kentucky, Second National Bank, Third National Bank of Louisville, Western Bank, Western Financial Corporation. Two of these banks, to wit, the People's Bank of Kentucky went into liquidation about 1876 and has been in a state of liquidation since that time, and the Franklin Bank of Kentucky has done comparatively no business for the last twenty years.

J. G. BARRETT.

120 *Deposition of A. L. Schmidt*

A. L. SCHMIDT, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. A. L. Schmidt; reside in Louisville, Kentucky; am cashier of the First National Bank.

Q. How long have you been connected with the First National Bank?

A. Since its organization, in 1863. I was teller from its organization up to October, 1879, and since that time I have been cashier.

Q. When was that bank organized?

A. November 1st, 1863.

Q. State whether or not Frederick Fable was ever a depositor at your bank.

A. To the best of my recollection, he never was.

Q. What are your facilities for knowing as to who are your depositors?

A. Having been teller for almost seventeen years, I am familiar with all the transactions of the bank, and would have known if he had been a depositor.

Q. State whether or not Frederick Fable was ever a stockholder in your bank.

A. Never.

A. L. SCHMIDT.

Deposition of Geo. S. Allison.

GEO. S. ALLISON, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainant-, testified as follows:

Q. State your name, residence, and occupation.

A. George S. Allison; reside in Louisville, Kentucky; am cashier of the Second National Bank.

Q. How long have you been cashier of that bank?

A. Fifteen years—since 1865.

Q. State whether or not Frederick Fable was ever a depositor at your bank.

A. He never was a depositor there.

Q. State whether or not he was ever a stockholder in your bank.

A. He was no stockholder. The only transaction we ever had with Frederick Fable, or the firm, was in collecting drafts on the firm for correspondents.

GEORGE S. ALLISON.

121 *Deposition of J. J. B. Hilliard.*

J. J. B. HILLIARD, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. J. J. B. Hilliard; I reside in Jefferson county, Kentucky; am a member of a firm of A. D. Hunt & Company, in the banking business.

Q. State whether or not Frederick Fable ever was a depositor at your banking institution.

A. He never was.

J. J. B. HILLIARD.

Deposition of W. H. Bowen.

W. H. BOWEN, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. W. H. Bowen; reside in Louisville, Kentucky; am book-keeper for Theodore Schwartz & Co.

Q. How long have you been the book-keeper for Theodore Schwartz & Company?

A. I have been book-keeper for them for about eighteen years.

Q. State whether or not Frederick Fable ever deposited with you.

A. He kept an account, he said, about 1860 or 1861; it was certainly not later than 1862.

Q. Has he ever kept an account there since that time?

A. Only in those years. I don't know how long he kept them.

Q. Did he keep an account with you in 1875 or 1876?

A. No, sir.

Q. How many private bankers are there in the city of Louisville?

A. A. D. Hunt & Co., G. W. Morton & Co., Theodore Schwartz & Co.

W. BOWEN.

Deposition of Wm. J. Duncan.

WILLIAM J. DUNCAN, who, on being sworn as aforesaid, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. William J. Duncan; reside in Louisville, Kentucky; am cashier of the Louisville Banking Company.

122 Q. How long have you been cashier of the Louisville Banking Company?

A. About nine years.

Q. State whether or not one Frederick Fable was ever a depositor in your bank.

A. He never was.

Q. State whether or not Frederick Fable was ever a stockholder in your bank.

A. He never was.

W. J. DUNCAN.

Also the Deposition of F. Reidhar.

F. REIDHAR, who, on being sworn, as aforesaid, introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. F. Reidhar; reside at Louisville, Kentucky; am president of the German Insurance Bank, and am also president of the German Insurance Company.

Q. How long have you been president of the German Insurance Bank?

A. About 18 years, I believe.

Q. Did you know Frederick Fable?

A. Yes, sir.

Q. Did he do business with the German Insurance Bank?

A. No.

Q. Did he keep any deposits there?

A. No.

Q. Was he a stockholder in the German Insurance Bank?

A. Yes, sir.

Q. How much stock had he there?

A. Frederick Fable had stock in both the German Insurance Bank and in the German Insurance Company, of which I am president. The nominal value of said stock was $50 a share, there being altogether 140 shares.

Q. When did he buy that stock?

A. When we commenced the insurance company.

Q. When did you commence the insurance company?

A. In October, 1858. He was one of the first subscribers; he had 20 shares; he paid 10 per cent. Now he has got 140 shares, and didn't pay anything since.

Q. Has he ever sold any of his stock?

123 A. I don't think he has. I am certain he has not.

Q. He was never a regular depositor in the bank, was he?

A. No.

F. REIDHARD, *President.*

Also the Deposition of Jacob Krieger, Sr.

Also the deposition — JACOB KRIEGER, Sr., who, on being sworn as aforesaid, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. Jacob Krieger, S-.; residence, Louisville, Kentucky; am president of the Masonic Savings Bank.

Q. How long have you been president of that bank?

A. Ever since 1871. I was cashier before that time, since 1868.

Q. Did you know Frederick Fable?

A. I did.

Q. Was he a depositor at your bank?

A. He was.

Q. How long was he a depositor at your bank?

A. The exact date I do not know, but it was over six or seven years.

Q. Dating back to whereabouts?

A. He must have been a depositor for eight years, dating back to about 1871 or 1872.

Q. I will show you a paper here and get you to explain what it is, and ask you to file it and make it a part of your deposition.

A. The paper in question, which I file as part of my deposition, is a copy from the face of the ledger of the account of Frederick Fable, dated from July 1st, 1875, to July 1st, 1876, which is marked Exhibit No. 1.

Q. Is that Exhibit No. 1 a complete copy of his account in the ledger from July 1, 1875, to July 1st, 1876?

A. It is.

Q. And does that exhibit show all the transactions of Frederick Fable with your bank during that time?

A. It does.

Q. Was Frederick Fable a stockholder in your bank?

A. He was; and the stock is yet in the name of Frederick Fable.

Q. When did he first become a stockholder in your bank? State as near as you can.

A. I think he became a stockholder in 1868.

124 Q. Does his estate still hold the stock in your bank which he owned in 1868?

A. It does.

Q. Did Frederick Fable in his lifetime transfer any stock he owned in that bank?

A. Frederick Fable, in subscribing stock in 1868, had a partner by the name of Nicholas Miller, and on buying his interest out the stock owned then by Fable & Co. was divided and Frederick Fable kept his stock ever since. It has never been transferred.

Q. Didn't Fable keep his personal account at your bank, or did he keep his principal account there?

A. I am not able to state whether he kept his largest account with us. I am inclined to believe he kept a larger account with the Western Bank than with us; it is hard to state from memory.

Q. Did Frederick Fable keep a separate account from his business account in your bank, or was his moneys all together?

A. He only kept one account, under the style of Frederick Fable.

Q. Was that supposed to be his account which he had as the candle-maker—his business account?

A. Yes, sir.

Q. During the years 1875 and 1876 did Frederick Fable borrow any large sums of money from you, or any small sums?

A. I have here a memorandum from the liability book of the bank which shows that, aside from the common business discount, he borrowed money on several occasions:

On August 2d, 1875, he borrowed $2,000, which was twice renewed; the last time he renewed was December 6th, 1875.

On October 4th, 1875, he borrowed $1,000. December 30th he discounted $1,000, being note of Dippold & Son.

On February 7th, 1876, he borrowed $2,000, with stock as collateral.

On June 1, 1876, he borrowed $5,000, with German Insurance stock as collateral.

Which memorandum I herewith file as Exhibit No. 2, and make part of my deposition in this case.

Q. State where the proceeds of these discounts went, as far as you know.

A. The proceeds of all the discounts were regularly credited to his account and checked out in the general course of his business.

Q. Were you intimate with Frederick Fable?

A. Not very intimate, though I knew him very well.

Q. Did you ever hear of his loaning large sums of money to his son Philip?

A. I never thought he did.

Q. Is it likely, from your business or social acquaintance with him, that you would have heard it in some way if it had
125 been done—that is, if he had loaned him as much as ten thousand dollars ($10,000) at one time?

A. It is hard to answer; as a common business transaction by an acquaintance with the bank, I likely would have heard of it; but some old Germans keep their private matters very close—especially their money matters—so strictly private that it is very hard even for a sharp business man to learn much about them.

Q. Is it likely, from your knowledge of Fable's financial condition, that he could have advanced $28,000 to his son within a short time without your finding it out or hearing anything of it?

A. It is hardly to be presumed that I would not have known something of it during his business intercourse, but from the very fact that these old Germans keep their money matters so very private I would not like to say in testimony that I would surely have known of it.

Q. Was he a man who usually made deposits of all his money in bank?

A. I don't think that he would deposit all his money in bank.

JACOB KRIGER, SR.

Deposition of C. N. Warren.

Also the deposition of C. N. WARREN, being sworn as aforesaid, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. C. N. Warren; residence, Louisville, Kentucky; am president of the Louisville City National Bank.

Q. Did you know Frederick Fable?

A. No, sir.

Q. How long have you been president of the Louisville City National Bank?

A. Since it started, in 1865.

Q. Did Frederick Fable ever deposit at your bank?

A. No, sir.

Q. Was he ever a stockholder since its formation?

A. No, sir.

C. N. WARREN.

Deposition of Milton McKnight.

Also the deposition of MILTON MCKNIGHT, being sworn as aforesaid *was*, on being introduced and questioned by JOHN BARRETT, attorney for complainant-, testified as follows:

Q. State your name, residence, and occupation.

126 A. Milton McKnight; residence, Louisville, Kentucky; am book-keeper in the Bank of Kentucky.

Q. Are you the general book-keeper of the Bank of Kentucky?

A. No, sir; I am the "individual" book-keeper.

Q. Did Frederick Fable ever deposit at your bank, to your knowledge?

A. No; not that I know of.

Q. He never kept an account there, did he?

A. Not that I know of. He may have had, but I don't know that he did.

Q. How long have you been a book-keeper at the Bank of Kentucky?

A. About ten or twelve years.

Q. Has he within that period of ten or twelve years ever deposited at your bank?

A. Not that I know of.

Q. Was Frederick Fable a stockholder in your bank?

A. I don't know; at least I don't think he was. If he had been I would likely have known it. I don't think he ever kept an account there, and I have no recollection of his name.

MILTON McKNIGHT.

Deposition of H. Hurter.

Also the deposition of HENRY HURTER, being sworn as aforesaid, *was* on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. Henry Hurter; residence, Louisville, Kentucky; am cashier of the Western Bank, and am secretary of the Western Insurance Company.

Q. Did you know Frederick Fable in his lifetime?

A. Yes, sir.

Q. Was he a depositor at your bank?

A. Yes, sir.

Q. Do you know whether or not he kept his principal account at your bank?

A. That I can't say; I think he also kept an account elsewhere.

Q. Where else did he keep an account that you know of?

A. I believe at the Masonic Savings Bank. This paper I have here is a transcript of the account of the individual ledger—F. Fable's account with the Western Bank from June 1st, 1875, to September 1st, 1876, which I herewith file as part of this deposition, marked Exhibit No. 1.

127 Q. Does the Exhibit No. 1 (which you have now filed and made part of your deposition) contain a complete transcript of Frederick Fable's account in the individual ledger between the dates mentioned in the account?

A. Yes, sir.

Q. And does it or not include all the transactions he had with your bank between those dates?

A. Yes, sir.

Q. You have stated just now that the Western Bank and Masonic Savings Bank were depositaries of said Fable. Do you know of any other bank in which he kept an account?

A. No, sir.

Q. Is it or not your impression that these are the only two banks in which F. Fable did business in that time?

A. I believe it is. I don't remember of seeing any checks on other banks drawn by him.

Q. I will ask you whether or not during the time this Exhibit No. 1 indicates F. Fable obtained discounts at your bank.

A. He did.

Q. I will ask you whether or not Exhibit No. 1 shows these discounts.

A. Yes, sir; it does.

Q. I will ask you whether or not you ever heard of Frederick Fable advancing as much as $28,000 to his son Philip in 1875 or 1876, or at any time.

A. No, sir; I never heard of it.

Q. I will ask you whether or not Frederick Fable was a stockholder in your bank.

A. Yes, sir; he was.

Q. When did he first acquire stock in your bank?

A. My recollection is he was one of the original stockholders.

Q. When was the bank formed?

A. In 1865.

Q. State whether or not Frederick Fable transferred any stock he owned in your bank after 1872 until the time of his death.

A. Not after May, 1872.

Q. He transferred none in 1875 or 1876?

A. No, sir.

Q. Was or not Frederick Fable a stockholder in the Western Insurance Company, which you represent?

A. I think he is.

Q. State whether or not Frederick Fable transferred any of the stock which he owned in the Western Insurance Company in 1875 or 1876.

A. My recollection is that he did not transfer any.

HENRY HURTER.

128 *Deposition of Louis G. Tucker.*

Also the deposition of LOUIS G. TUCKER, who, on being sworn as aforesaid, was introduced and questioned by JOHN BARRETT, attorney for complainants, — testified as follows:

Q. State your name, residence, and occupation.

A. Louis G. Tucker; residence, Louisville, Kentucky; am "individual" book-keeper at the Western Financial Corporation.

Q. How long have you been such book-keeper at that bank?

A. Between nine and ten years.

Q. Within that nine or ten years did one Frederick Fable ever keep an account at your bank?

A. He did not.

Q. State whether or not Frederick Fable was a stockholder in your bank in that time.

A. To my knowledge, he never owned a share of our stock.

Q. Then, of course, he never transferred any stock in that time?

A. I think not.

LOUIS G. TUCKER.

The further taking of testimony in this cause was hereupon adjourned to meet, at same place, to-morrow, May 8th (Saturday), 1880, at 9.30 o'clock a. m.

MAY 8TH, 1880—9.30 a. m.

Met pursuant to adjournment, when the further taking of testimony in this cause was resumed.

Deposition of John J. Barrett.

Deposition of JOHN J. BARRETT, who, on being sworn as aforesaid, was introduced and questioned by JOHN BARRETT, attorney for complainants, — testified as follows:

Q. State your name, residence, and occupation.

A. John J. Barrett; residence, Louisville, Kentucky; am secretary of the Franklin Insurance Company of Louisville.

Q. How long have you been connected with that company?

A. Since March, 1873.

Q. Did you know one Frederick Fable?

A. No, sir; I did not.

Q. Is or was Frederick Fable a stockholder in the Franklin Insurance Company of Louisville since 1874?

A. He was not, and is not.

129 Q. Were any stock transfers in that company made in his name and in that time?

A. There was not.

Q. Please state how many local insurance companies (incorporated companies) we have in Louisville.

A. At present there are seven stock companies (fire) and one mutual (fire) and one life, making nine in all.

Q. Will you please give their names?

A. Franklin Insurance Company of Louisville, German Insurance Company, German Security Insurance Company, Louisville Germania Insurance Company, Louisville Insurance Company, Union Insurance Company of Louisville, Western Insurance Company, Kentucky and Louisville Mutual Insurance Company, Southern Mutual Life Insurance Company of Kentucky.

Q. Are all of these insurance companies you have named above stock companies?

A. All except the Kentucky and Louisville Mutual Insurance Company.

JOHN J. BARRETT.

Deposition of L. T. Thustin.

Also the deposition of L. T. THUSTIN, who, on being sworn as aforesaid, was introduced and questioned by JOHN BARRETT, attorney for complainants, — testified as follows:

Q. State your name, residence, and occupation.

A. L. T. Thustin; residence, Louisville, Kentucky; am secretary of the Southern Mutual Life Insurance Company, and I have been secretary of that company for fourteen years—ever since its organization.

Q. Were you or not acquainted with Frederick Fable, of Louisville?

A. I knew of him, but didn't know him personally.

Q. State whether or not he was a stockholder in your company.

A. No, sir; he has never been a stockholder in the company.

Q. State whether or not any transfers of stock in the company were made in his name.

A. There were none.

L. T. THUSTIN.

Deposition of P. Viglini.

P. VIGLINI, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

130 A. P. Viglini; reside in Louisville, Kentucky, and am president of the German Insurance Bank of Louisville.

Q. How long have you been president of the German Insurance Bank of Louisville?

A. Since April, 1879.

Q. Were you connected with that bank before that year; if so, in what capacity?

A. I had been cashier of the bank since its organization, in 1869.

Q. Did you know Frederick Fable during his lifetime?

A. No, sir; I did not.

Q. Was he ever a depositor in the German Bank of Louisville?

A. No.

Q. Was he ever a stockholder in it?

A. No, sir.

P. VIGLINI.

Deposition of Frank Baker.

FRANK BAKER, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. Frank Baker; reside in Louisville, Kentucky, and am "individual" book-keeper at G. W. Norton & Company's, private bankers.

Q. Did you know one Frederick Fable?

A. No, sir; I did not.

Q. State whether or not Frederick Fable has ever been a depositor with the banking establishment of G. W. Morton and Company since you have been connected with that firm.

A. He has not. I looked through the ledgers carefully from the time they commenced business, but did not find his name.

Q. When did they commence business in Louisville?

A. I think in 1867.

Q. How long have you been a book-keeper for G. W. Norton & Company?

A. Six or seven years.

FRANK BAKER.

Deposition of E. C. Bohne.

E. C. BOHNE, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

131 A. E. C. Bohne; residence, Louisville, Kentucky, and cashier of the Third National Bank of Louisville.

Q. How long have you been connected with the Third National Bank of Louisville?

A. I have been connected with the Third National Bank ever since its commencement, in September, 1874.

Q. Were you acquainted with Frederick Fable, a candle-maker, of Louisville?

A. Not personally. I knew of him and heard of him, but didn't know him.

Q. State whether or not he was ever a depositor at your bank.

A. No.

Q. State whether he was ever a stockholder in your bank.

A. No, sir.

Q. How long has the Third National Bank of Louisville been in existence?

A. Since September, 1874.

E. C. BOHNE.

The further taking of testimony in this cause was hereupon adjourned to meet, at same place, Monday, May 9th, at 3 p. m. (1880).

MONDAY, *May 9th*, 1880—3 p. m.

Met pursuant to adjournment, when the further taking of testimony in this behalf was resumed by John Barrett, attorney in behalf of plaintiffs.

Deposition of Logan C. Murray.

LOGAN C. MURRAY, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. Logan C. Murray; residence, Louisville, Kentucky; am president of the Kentucky National Bank.

Q. How long have you been president and also connected with said bank?

A. I have been connected with it for nearly nine years.

Q. In what way were you connected with said bank before you became its president?

132 A. I was the original cashier, up to the time I was elected president.

Q. Did you know Frederick Fable?

A. I did.

Q. Was he a depositor at your bank?

A. He was not.

Q. Was he a stockholder in your bank?

A. He was.

Q. When did he become a stockholder in your bank?

A. About the beginning of 1872, I think.

Q. Did Frederick Fable make any transfers of his stock on the books of your bank between 1872 and the time of his death?

A. He did not.

Q. Then the stock he bought in 1872 was in his name in 1878, at the time of his death, and was never transferred?

A. Yes, sir; and he has some dividends accumulated which are not drawn yet.

LOGAN C. MURRAY.

Deposition of J. W. Nichols.

J. W. NICHOLS, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainant-, testified as follows:

Q. State your name, residence, and occupation.

A. J. W. Nichols; residence, Louisville, Kentucky; am cashier of Farmers' and Drovers' Bank; was formerly teller of that bank.

Q. How long have you been connected with the Farmers' and Drovers' Bank, both as teller and cashier?

A. Six years.

Q. Did you know one Frederick Fable?

A. No, sir.

Q. Was he ever a depositor at your bank?

A. No, sir.

Q. Was he ever a stockholder in your bank?

A. No, sir.

J. W. NICHOLS.

Deposition of J. S. Barret.

J. S. BARRET, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

133 Q. State your name, residence, and occupation.

A. J. S, Barret; residence, Louisville, Kentucky; and am cashier of the German Security Bank and secretary of the German Security Insurance Company.

Q. How long have you been cashier of the German Security Bank?

A. Thirteen years—ever since its organization.

Q. Did you know one Frederick Fable, a candle-maker, of Louisville?

A. I did not.

Q. Was he ever a depositor at your bank?

A. He was not.

Q. Was he ever a stockholder in your bank?

A. He was not.

Q. Was he ever a stockholder of the German Security Insurance Company?

A. He was not.

Q. Has there ever been any transfer of stock in his name in either the German Security Insurance Company or the German Security Bank?

A. There has not.

J. S. BARRET.

The further taking of testimony in said cause was hereupon adjourned to meet, at same place, Wednesday, May 10th, 1880, at 9 a. m.

WEDNESDAY, *May 10th*, 1880—9 a. m.

Met pursuant to adjournment, when the taking of testimony in this cause was resumed.

Deposition of James A. Leech.

JAMES A. LEECH, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. James A. Leech; residence, Louisville, Kentucky; am cashier of the Bank of Louisville.

Q. Were you acquainted with Frederick Fable?

A. I was not.

Q. How long have you been connected with the Bank of Louisville?

A. Since February, 1873.

134 Q. In what capacity?

A. As cashier.

Q. State whether or not Frederick Fable within that time has been a depositor at the Bank of Louisville.

A. He has not.

Q. State whether or not the said Fable was ever a stockholder in the Bank of Louisville.

A. He was not.

Q. State whether or not any stock has ever been transferred on the books of your bank in the name of Frederick Fable within the time you have been there.

A. No stock has ever stood in his name since I have been in the bank.

JAMES A. LEECH.

Deposition of P. Viglini (2nd).

P. VIGLINI, who, as president of the German Insurance Bank of Louisville, had previously testified in this cause, was recalled by JOHN BARRETT, counsel, and re-examined in behalf of complainants, as follows:

Q. You are president of the Louisville Germania Insurance Company also, are you not?

A. Yes, sir.

Q. How long have you been president of the Louisville Germania Insurance Company?

A. Eighteen months.

Q. You were connected with it before that, were you not (before becoming its president)?

A. Yes, sir; I was secretary of that company.

Q. How long have you been connected with that insurance company?

A. Since its organization, in 1872.

Q. State whether or not Frederick Fable was ever a stockholder in that company?

A. He was not.

P. VIGLINI.

Deposition of M. A. Huston.

M. A. HUSTON, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

135 A. M. A. Huston; residence, Louisville, Kentucky; am secretary of the Louisville Insurance Company.

Q. How long have you been secretary of the Louisville Insurance Company?

A. Since May 1st, 1872.

Q. Did you know Frederick Fable?

A. No, sir; I did not.

Q. Was he ever a stockholder in your company?

A. No, sir.

Q. Has any stock in that company ever been transferred in the name of Frederick Fable since 1872?

A. No, sir.

M. A. HUSTON.

Deposition of Joshua F. Speed, Jr.

JOSHUA F. SPEED, Jr., duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.

A. Joshua F. Speed, Jr.; residence, Louisville, Kentucky; am secretary of the Safety Vault Company now, but was formerly assistant cashier of the Savings Bank of Louisville during its existence.

Q. Who was the cashier of the former Savings Bank of Louisville?

A. J. H. Rhorer.

Q. Where is he now?

A. He is in the penitentiary at Frankfort, Kentucky—a criminal.

Q. He was convicted for embezzlement, was he not?

A. Yes, sir.

Q. How long were you connected with the Savings Bank of Louisville?

A. Since the first of September, 1866.

Q. Did you know Frederick Fable, of Louisville, who is now dead?

A. Not personally.

Q. Did he ever keep an account at the said bank?

A. I have been examining the old books of the bank, and I find his name is not there as a depositor.

Q. Are those books in your custody?

A. Yes, sir.

Q. Was he ever a stockholder in your old institution (Savings Bank of Louisville) at any time?

A. No, sir.

Q. Was he ever the renter of a box in the safety-vault department of the old Savings Bank of Louisville?

136 A. No, sir; he was not.

Q. Is your present institution the only safe-deposit vault company in the city?

A. Yes, sir.

Q. And has been the only one for ten years back or more?

A. Yes, sir.

J. F. SPEED, JR.

Deposition of W. C. Tyler.

W. C. TYLER, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainant-, testified as follows:

Q. State your name, residence, and occupation.

A. W. C. Tyler; residence, Louisville, Kentucky, and secretary of the Union Insurance Company of Louisville.

Q. How long have you been secretary of the Union Insurance Company?
A. Eight years.
Q. Did you know Frederick Fable?
A. I don't think I did, though I knew of him.
Q. Was he ever a stockholder in your company?
A. Never.
Q. Was there ever any transfer of the company's stock made in his name?
A. None.

W. C. TYLER.

The further taking of testimony in this cause was hereupon adjourned to meet, at same place, May 11th, 1880, at five o'clock p. m.

THURSDAY, *May 11th*, 1880—5 p. m.

Met pursuant to adjournment, when the taking of testimony in this cause was resumed.

137 *Deposition of Adolph Reutlinger.*

ADOLPH REUTLINGER, duly sworn, on being introduced and questioned by JOHN BARRETT, attorney for complainants, testified as follows:

Q. State your name, residence, and occupation.
A. Adolph Reutlinger; residence, Louisville, Kentucky, and am president of the German National Bank.
Q. Did you know Frederick Fable, deceased?
A. I did.
Q. Did you know him with any degree of intimacy?
A. Yes, sir; I was well acquainted with him.
Q. How long did you know him?
A. For a good many years.
Q. About how many years did you know him? Was it as much as ten or fifteen years?
A. Yes, sir; I would suppose about ten or fifteen years.
Q. How long have you been connected with the German National Bank?
A. Ever since it started, in 1872. I was formerly connected with the German Insurance Bank.
Q. Was Frederick Fable at any time a depositor at the German National Bank?
A. No, sir.
Q. Was he ever at any time a stockholder in the German National Bank?
A. No, sir.
Q. From your knowledge of Frederick Fable and his habits of business and prudence, do you suppose he ever kept as much as eight or ten or fifteen or twenty thousand dollars in his safe at his store?
A. I don't believe it.

Q. Would such a thing be consistent with his habits of business and prudence, as known to you?

A. I think not. Only he might on a Saturday evening (if he could not get into bank to make his deposit) keep it over Sunday.

Q. Do you think he would have put it in bank on the Monday morning following?

A. Yes, sir; I do.

Q. He was a prudent, careful man, was he?

A. Yes, sir; a very prudent man.

Q. Was he a man who was respected by the community and by all his acquaintances?

A. Yes, sir. I don't think he had any enemies at all.

ADOLPH REUTLINGER,
President German National Bank.

138 STATE OF KENTUCKY, *County of Jefferson:*

I, H. D. Dougherty, a law stenographer and an examiner of Jefferson county, in the State of Kentucky, duly appointed, commissioned, and qualified as such and by law empowered and authorized to take depositions and certify the same, do certify that the foregoing depositions of J. H. Lindenburger, M. G. Patton, John G. Barrett, A. L. Schmidt, G. S. Allison, J. J. B. Hilliard, W. H. Bowen, W. J. Duncan, F. Reidhar, Jacob Kreiger, Sr., C. N. Warren, M. McKnight, H. Hunter, L. G. Tucker, J. J. Barrett, C. L. Thustin, P. Viglini, F. Baker, E. C. Bohne, L. C. Murray, J. W. Nichols, J. S. Barrett, J. A. Leech, M. A. Huston, J. F. Speed, Jr., W. C. Tyler, A. Reutlinger were taken by and before me at the times and place stated in the caption and in the several orders and minutes of adjournment and reassembling hereinbefore set forth, pursuant to the agreement of counsel hereto attached and returned herewith, and also pursuant to the notice upon Philip Fable hereto attached and returned herewith, and for the purposes and in the action in the caption hereof set forth. I do further certify that the deposition- of said witnesses and of each of them were by me written down at the dictation of them and of each of them severally, and by me read over to them severally and by them severally signed in my presence; that the said witnesses and each of them before deposing were by me severally sworn that the testimony and depositions they should give should be the truth, the whole truth, and nothing but the truth.

I further certify that during the taking of said depositions there were present Mr. John Barrett, representing the firm of Barrett & Brown, solicitors for complainants, and that on the first day of the taking of these depositions Mr. W. O. Dodd, attorney for Philip Fable, was present but refused to cross-examine, and that he, said Philip Fable, was not present at the taking of the foregoing depositions or either of them, and no one offered to cross-examine for him. No other party was present in person or by agent or attorney.

Given under my hand this 13th day of May, 1880.

H. D. DOUGHERTY,
Examiner, Jefferson County, Ky.

In order of time this testimony should precede that taken at Louisville, which the binder has by mistake placed in this roll.

W. SCOTT.

182. Total examiner's fees, $75.00.
Paid by complainants.
May 15, 1880.

H. D. DOUGHERTY,
Exam. for Jeff. Co., K.

139 In the District Court of the United States for the Western District of Pennsylvania.

JOHN F. DRAVO and ROBERT ARTHURS, Assignees in Bankruptcy of Dippold & Sons,
vs.
JOHN DIPPOLD and NANNIE, His Wife, and PHILIP FABLE *et* KATE, His *ux.*

No. 4. October Term, 1879. In Equity.

[On the margin:] In the order of time the testimony should precede that taken at Louisville, which the binder has by mistake placed first in the roll.

Pursuant to notice served upon the parties and attached hereto the examiner was in attendance at the office of Knox & Reed, Thursday, April 8th, 1880, at 4 o'clock p. m.

Appearances: For complainants, Mr. J. H. McCreery; for respondents, Mr. H. W. Weir and Messrs. Knox & Reed.

GEORGE R. DUNCAN sworn on behalf of complainant and examined by Mr. MCCREERY:

Q. Will you state your business and place of residence?

A. Cashier of Iron City National Bank; live in Chartiers township, Allegheny county.

Q. State whether you were connected with that bank in January, 1876.

A. Yes, sir.

Q. In what year did you become cashier of the bank?

A. 1871.

Q. State whether you were acquainted with John Dippold, of the firm of John Dippold & Sons.

A. Yes, sir; I knew the gentleman.

Q. Did Dippold and his firm do business at your bank?

A. No, sir; they kept no account there.

Q. Did they do any business with you in the discounting line?

A. Well, I don't know whether we did any discounting directly for them or not. We had a great deal of their notes for other parties. Their notes were offered to our bank for discount from time to time.

Q. State whether in January, 1876, your bank held the paper of John Dippold or John Dippold & Sons with his endorsement.

A. I could not tell that without examining our books. I think we had some notes of theirs, though, to different parties.

Q. Well, subsequent to January, 1876, and until the date of their bankruptcy, did you continue to have their notes?

A. Yes; we had them off and on.

140 Q. Will you state whether those notes were for a large amount or a small amount?

A. For different amounts; as high as two or three thousand dollars.

Q. At the time of their bankruptcy, in February, 1878, was your bank a holder of any of their paper?

A. Yes; we held one note of one thousand dollars.

Q. Can you give the date of the note?

A. Yes; January 15th, 1878, for four months, to the order of Hugh Flannigan, and endorsed H. Flannigan and W. B. Houston.

Q. Was that note a renewal of other notes that had been in your bank?

A. No, sir; this was the original.

Q. Will you oblige us by making an inspection of your books and give us at some subsequent hearing the business done from September 1st, 1875, to the date of the bankruptcy by Dippold & Sons?

A. Yes, sir; I will do so. I didn't look up the others.

Mr. Knox, for respondents, objects to the foregoing testimony of this witness as incompetent and irrelevant.

ROBERT K. WILSON, sworn on behalf of complainants and examined by Mr. McCREERY:

Q. State your residence and business.

A. Residence, Leetsdale, Allegheny county; I am employed as cashier of the Citizen's National Bank.

Q. How long have you been cashier of that institution?

A. I think since 1871; I am not sure about that; it might be a year earlier.

Q. Have you a personal acquaintance with John Dippold, of the firm of Dippold & Sons?

A. Yes, sir; I know the man.

Q. Can you state whether about January, 1876, this firm had any business dealings with your bank, either directly or by any of your customers?

A. John Dippold had dealings individually.

Q. State whether to any extent.

A. Very limited; occasional pieces of paper.

Q. Did they continue through the years 1876 and 1877 on until the date of bankruptcy?

A. Off and on—yes, sir.

Q. Can you give us the amount of paper held by your bank in January, 1876?

141 A. No, sir; might not have been any. We might have had one note or two, off and on. I think we had, but it was paid.

Q. Did your bank hold his paper in February, 1878?
A. Not his paper; no, sir.
Q. Well, paper of Dippold & Sons?
A. No, sir.
Q. Did you hold any paper endorsed by him?
A. Yes, sir.
Q. To what amount?
A. $850.
Q. State whether in the year 1876, from January up and on to the date of bankruptcy, paper of Dippold & Sons or of Dippold was offered at your bank frequently.
A. Not frequently. I don't know that. I don't recollect. I don't think it was. It was very infrequently that it was offered at all.

Mr. Knox, on behalf of the respondents, enters an objection to the testimony of this witness as irrelevant and incompetent.

By Mr. McCreery:

Q. Who was the drawer of the paper that you held at the date of bankruptcy?
A. C. B. Lander. It is dated in Louisville.

Cross-examination.

By Mr. Knox:

Q. What was the amount you held at bankruptcy?
A. $850.
Q. Was it due at the time they went into bankruptcy?
A. I can't tell. I don't know when they went into bankruptcy. It matured May 26th, 1878.

Redirect examination.

Q. Has it been paid?
A. It has never been paid; no, sir.
Q. A four months' note?
A. Yes; four months, dated January 23d, 1878.

Recross-examination.

Q. Is John Dippold maker or endorser?
A. The note is made by C. B. Lander to the order of John
142 Dippold & Sons, endorsed by Dippold & Sons and by John Dippold. We discounted it for John Dippold individually. The proceeds went to his credit and it was checked out by him. He stated at the time that it was given for coal that was sent to Louisville.

A. H. Patterson, sworn on behalf of complainants and examined by Mr. McCreery:

Q. State your residence and business.

A. I am cashier of the Duquesne National Bank; I live on Forbes street, 14th ward, Pittsburgh.

Q. How long have you been connected with that institution in that capacity?

A. About eight years as cashier.

Q. Are you acquainted with John Dippold, of the firm of Dippold & Sons?

A. I am.

Q. State whether your bank had any business dealings with John Dippold or Dippold & Sons in the year 1876 or prior thereto.

A. Well, we bought some of their paper from other parties.

Q. From your own customers?

A. Yes, sir.

Q. State whether about January, 1876, your bank held their paper and to what amount, if you can give it, in January, 1876, or the latter part of 1875.

A. In the year 1877 we bought about $10,000 of their paper at different times.

Q. Can you state whether there was a large amount of paper of Dippold & Sons or John Dippold on the market in the year 1876?

Objected to by Mr. Knox until the source of witness' knowledge is shown.

A. I could not say only for our own bank.

Q. State whether, in addition to this $10,000 of paper which you purchased yourselves, there were other notes offered to your institution that were not purchased or discounted.

A. I could not say that there was any—that is, there may have been, but I don't remember it. I could not place them at any specified time.

Q. Well, at the date of the bankruptcy did your bank hold any of their paper?

A. We held one piece with their endorsement.

Q. What was the amount of it?

143 A. $1,000.

Q. Had the note matured at the date of bankruptcy?

A. I don't think it had. It fell due February 11th, 1878.

Q. Was it protested for non-payment?

A. Yes, sir.

Q. Has that note been paid?

A. No, sir.

Q. Your bank still holds it?

A. Yes, sir.

Q. Was it endorsed by Dippold & Sons or John Dippold?

A. No, sir; it was C. B. Lander, for $1,000, dated November 10th, at 90 days, and endorsed John Dippold & Sons and W. B. Houston.

Mr. Knox, on behalf of respondents, enters an objection to the testimony of this witness as incompetent and irrelevant.

Cross-examination.

By Mr. KNOX:

Q. For whom was that note discounted?

A. This note was discounted to lift another one that was maturing, one of Dippold & Sons' notes. Dippold himself came into the bank and had this one in place of one of his own.

Q. Was the note which this note lifted an original note or a renewal?

A. I believe it was an original.

Q. Who got the proceeds of that transaction?

A. W. B. Houston.

Q. Well, then, this note refers to an indebtedness of Houston to your bank. It was discounted by you for Houston, and the proceeds went to his credit?

A. Yes, sir.

Q. Then you only held John Dippold on this indebtedness as endorser, both as it existed now and before?

A. Houston loaded coal for them and they gave this note.

Q. It was commercial paper in the hands of Houston?

A. Houston loaded coal for Dippold & Sons, and Houston brought it to us and it was discounted for him. When that note matured Dippold himself came into bank and gave us this note of Lander's, endorsed by him and by Houston, to lift that note.

Q. During 1876 you bought from outside parties ten thousand dollars of John Dippold's paper?

A. Yes, sir.

Q. Was that paper all paid at maturity?

A. Yes, sir.

144 Q. Did you discount or purchase any paper during 1877?

A. Yes, sir.

Q. Can you tell us to what extent?

A. Ninety-five hundred dollars in 1877.

Q. Was all that paper paid at maturity?

A. All except one note.

Q. What was the character of this paper that you discounted during 1876 and 1877—was it commercial paper?

A. Yes; nearly always brought in by Houston.

Q. Houston was loading coal for Dippold?

A. Yes, sir.

W. VANKIRK sworn on behalf of complainant and examined by Mr. MCCREERY:

Q. State whether you are connected with the Tradesmen's Bank, and in what capacity.

A. Yes, sir; vice-president.

Q. For how many years?

A. Since about 1865 or 1866; I am not positive as to the date.

Q. Are you acquainted with the firm of Dippold & Sons and with John Dippold, a member of that firm?

A. Yes, sir.

Q. State whether Dippold and his firm had any account at your bank in 1875, 1876, and 1878.

A. They did.

Q. Can you state the amount of paper of Dippold & Sons, or paper of John Dippold, or with the endorsements of Dippold or his firm held by your bank in January, 1876?

A. About $40,000 in January, 1876.

Q. Can you tell us the character of the paper? Was it paper of Dippold & Sons or John Dippold?

A. It was John Dippold & Sons endorsed by John Dippold.

Q. During the year 1876 did they continue to do business with your bank?

A. They did.

Q. To any great extent?

A. Yes, sir.

Q. And during the year 1877 did they still continue as discounters?

A. I believe they continued up until a short time before their bankruptcy.

Q. Can you state the amount of paper held by your bank at the date of bankruptcy?

A. No, sir; I could if I would look at the books.

Q. You still held their paper at that date?

145 A. Yes, sir.

Q. This paper that you held in January, 1876, was it paid or did it continue in the shape of renewals to the bank?

A. The greater part of it continued in the shape of renewals. There may have been part of it paid; I guess there was; I am not positive as to the amount.

Q. The amount of the claim of the bank against Dippold & Sons was proved before the register?

A. It was.

Q. That would show the correct amount?

A. Yes, sir.

Q. State whether in discounting the paper of Dippold & Sons your bank took their paper from time to time on faith and credit of Dippold's endorsement.

A. That was the principal credit—John Dippold.

Q. On account of his personal endorsement?

A. Yes, sir.

Q. And the fact that he was a member of the firm of Dippold & Sons?

A. Yes, sir.

Q. In the year 1875 did they also run an extensive account with your bank?

A. Yes, sir; they did.

Q. This amount that you have given, $40,000, was that of date January, 1876?

A. Yes; well, it was prior to January, 1876—maturing after January, 1876—and then renewed.

Mr. Knox enters an objection to the testimony of this witness as incompetent and irrelevant.

Cross-examination.

By Mr. KNOX:

Q. What was the character of the paper that you discounted for John Dippold or for Dippold & Sons?

A. Dippold & Sons, endorsed by John Dippold.

Q. Was it commercial paper or accommodation paper?

A. Accommodation paper. We had some Louisville paper.

Q. What proportion of that $40,000 was accommodation paper?

A. It was all accommodation paper.

Q. You carried that on down to the time of his bankruptcy?

A. Yes, sir.

Q. You testify that you loaned this principally upon the credits of John Dippold's endorsement?

146 A. Yes, sir.

Q. Is not that usually the case in accommodation paper?

A. Not always; we took the name of the firm, too.

Q. There you had John Dippold in a double capacity. Is it not usual to take into consideration the whole paper when it is discounted?

A. Certainly.

Q. Was there anything peculiar about taking this paper on the credit of Dippold different from any other case?

A. Yes; Dippold was the owner of the real estate.

Q. That was the reason you considered Dippold's endorsement rendering the paper better?

A. Yes, sir.

Q. Did you discount any commercial paper for the firm?

A. Yes; I suppose we did. This Lander I suppose was considered commercial paper. They drew against the coal at Louisville.

Q. To what extent did you discount commercial paper?

A. I could not say exactly; about ten thousand dollars.

Q. Then, besides $40,000 of accommodation paper, you had discounted $10,000 of commercial paper?

A. Yes; but I would not be positive.

Q. Then, you misapprehended Mr. McCreery's first question. He asked what amount of paper you had on hand in January, 1876, upon which Dippold & Sons and Dippold were liable as makers or endorsers?

A. Yes; with reference to that, we had really about $50,000 altogether upon which John Dippold was liable. We had the $10,000 in addition.

Q. Was his commercial paper paid, as a rule, when it matured?

A. My impression is that this paper referred to now was renewed.

Q. This Lander paper?

A. Yes, sir.

Q. For what period of time?

A. We had a good part of it up to the time of bankruptcy.

Q. Is it customary to renew commercial paper when a man is carrying a large line of accommodation paper?

A. It was then; we did that.

Q. Is it a general rule?

A. No, sir; it is not.

Q. Was the commercial paper discounted for John Dippold & Sons notes got by customers or accepted drafts?

A. Principally they were accepted drafts.

Q. Did you know anything about the credit of the acceptors of those drafts that you discounted, or did you discount them exclusively upon the credit of Dippold & Sons or John Dippold?

A. Principally upon the credit of Dippold.

147 Q. When banks discount straight commercial paper do they usually pay much heed to anything else except the endorsement of their own customers?

A. We generally look to the standing of the parties that they are drawn on. My impression was that Dippold and Lander were connected.

Q. As a rule, is it not impossible to know the standing of your customers?

A. We cannot always understand that.

Q. Banks, when they discount straight commercial paper, do it on the faith of their customers?

A. Yes; that is the rule.

Q. Did you ever make any effort to collect from the acceptors of these drafts in Louisville the amount of money that was due or did you carry them on the request of John Dippold?

A. I could not say about that. Mr. Clarke, the cashier, attended to it. I did not attend to the business of the bank.

Q. Might not there have been a large additional amount of paper upon which Dippold and Dippold & Sons were liable and you not know it?

A. Certainly.

Q. During even these periods?

A. Yes, sir.

Q. You didn't keep any account, or do the book-keepers of the bank, of the endorsements of a note that may be discounted by you?

A. Yes, sir.

Q. Do you enter that upon the books?

A. Yes, sir.

Q. For instance, if I bring in a note made by Mr. McCreery to the order of Robert Arthurs and you discount it for me upon my endorsement, do you make a record of the fact that Arthurs endorsed that note?

A. Yes, sir; we do. We keep a memorandum, so as to keep the run of the paper.

Redirect examination.

By Mr. McCREERY:

Q. Was Lander, the party who made these acceptances, reputed to be a member of the firm of Dippold & Sons at Louisville?

Objected to by Mr. Knox:

148 Q. From your business dealing with the firm of Dippold & Sons, can you state whether or not Lander was a member of the Louisville firm?

Objected to by Mr. Knox as incompetent and irrelevant.

A. I cannot say positively in regard to it. It was just my impression.

Recross-examination.

By Mr. WEIR:

Q. State what amount was paid by Dippold during the year 1876.

A. I cannot state that. I could ascertain.

Q. Could you ascertain that by referring to your books?

A. Yes, sir.

Q. Could you give us an idea of the amount that he paid during 1876?

A. No, sir; I didn't keep the books. I would have no idea without looking at them.

Q. You think the greater part of the $40,000 spoken of was renewed?

A. I think it was, in 1876.

Q. What proportion of $40,000 was renewals?

A. I could not state that without looking at the books. The greater part of it; some place from $20,000 to $30,000. It may have been over.

Q. Can't you give us an idea of the amount that he paid during that year?

A. No, sir; I cannot. The bank books, I believe, would show that all.

By Mr. KNOX:

Q. Do you know whether the bank discounted any paper upon which Dippold or Dippold & Sons were accommodation endorsers or makers during those years—discounted for anybody else?

A. I suppose they did; could not speak positively. They did a great deal of business there. I have no doubt there was paper of other firms brought in.

Q. Discounted for other people?

A. That is, their paper endorsed for others. I could not say.

Q. You don't remember it from the fact of your being a director?

A. No, sir; I can't remember at this length of time.

MARSH HUNNINGS sworn on behalf of complainants and examined by Mr. MCCREERY:

Q. State your business.

149 A. Cashier of the Central Bank. I reside in Bellevue, this county.

Q. Were you cashier of the Central Bank in January, 1876?

A. That was the month in which I became cashier.

Q. Were you connected with the bank prior to that time in another capacity?

A. Yes, sir; as book-keeper.

Q. Had your bank business dealings with the firm of Dippold & Sons or John Dippold in the year 1876?

A. I could not say whether it ran back so far as 1876 or not; my impression is that it did not, but I didn't examine the books.

Q. Please do that in order to give us, at some subsequent hearing, the figures, if you can. Did your bank hold paper of Dippold or Dippold & Sons or paper for which they were responsible as endorsers at the date of their bankruptcy?

A. Yes, sir.

Q. State the amount and character of the paper.

A. They held paper of Dippold & Sons—two pieces; one for $400 and one for $500—that is, John Dippold & Sons' paper; the $400 piece was endorsed by Thomas S. Hutchinson; the $500 piece was endorsed by W. B. Houston.

Q. Was that all the paper your bank held?

A. That was all made by them; we also held paper of C. B. Lander, of Louisville, endorsed by Dippold & Sons—three pieces—$1,000 each.

Q. Were those promissory notes or acceptances?

A. My impression is they were promissory notes—Lander's notes—but would not be positive whether they were notes or acceptances.

Q. Did you have any other paper on which they were endorsers or responsible at the time of bankruptcy?

A. That was all.

Q. Was that original paper or was it renewals from time to time of other paper?

A. My impression is that it was renewals; these Lander pieces, I think, were all renewals, all paper of Dippold & Sons given to Houston and endorsed by Houston, stated to us as given for coal.

Q. Can you give us the date of the original paper in those transactions?

A. I can by examining the books.

Q. Had you personal acquaintance with Mr. Lander, who made those notes, and did you discount them on the faith and credit of the endorsers, Dippold & Sons?

A. My impression is that they were discounted more on the faith of Dippold—John Dippold—or the firm of John Dippold & Sons, of which he was a member; that is my impression. I paid very little attention to it; our president, Mr. Fawcet, being in the coal business, appeared to know all about it.

150 Q. Had this paper matured at the date of bankruptcy?

A. One piece of Dippold's matured February 16th, one piece matured March 11th, one piece of Lander's matured April 25th, one piece March 13th, and one piece March 22d, 1878.

Q. Were these notes or any portion of them paid?

A. No, sir.

Q. Were the notes of Lander protested?

A. Yes, sir.

Q. So that you still hold the endorsement of Dippold & Sons?

A. Yes, sir.

Cross-examination of this witness was deferred.

C. I. WADE sworn on behalf of complainants and examined by Mr. MCCREERY:

Q. State your residence and place of business.

A. Pittsburgh; Bank of Commerce.

Q. What position do you occupy in that bank?

A. Cashier.

Q. Were you connected with that bank in 1875 and 1876?

A. Yes, sir.

Q. In what capacity?

A. As teller.

Q. And are now there?

A. Yes, sir.

Q. Did your bank have any business dealings with the firm of Dippold & Sons or with your customers' paper of Dippold & Sons or paper endorsed by them in 1875 and 1876 and up to the date of bankruptcy?

A. We had in 1876, not in 1875.

Q. Give us the date of your first transaction with this firm.

A. June 9th, 1876, is the first record I have.

Q. What amount of paper was that, and in what condition?

A. One thousand dollars, four months' piece of paper, made by Dippold & Sons, endorsed by Harlem Coal Company.

Q. Did you continue to have dealings with paper made by this firm or upon which they were responsible as endorsers up to the date of bankruptcy?

A. Yes, sir.

Q. To what amounts did you hold their paper in 1876 and 1877?

A. We held $4,050 in 1876; $5,350 in 1877.

Q. At the date of their bankruptcy how much of their paper did you hold?

151 A. I don't remember.

Q. Can you approximate it?

A. The proof of claim would show.

Q. Can you state whether this paper held by you at the date of bankruptcy was original paper, or was it renewals of paper from time to time?

A. I think it was original paper; the record would go to show

that the pieces were taken up as they were due. It was not accommodation paper; it was business paper.

Q. Was it done at the request of your customers?

A. It was discounted by us for our customers.

Q. These people themselves had no account at your bank?

A. No, sir.

Q. This paper that you held at the date of bankruptcy, was it paper of Dippold & Sons or paper on which they were responsible as endorsers?

A. All the paper that we held was of Dippold & Sons, with one exception; that was an acceptance of C. B. Lander, of Louisville.

Q. Did that remain unpaid at the date of bankruptcy?

A. That is on hand to-day; we hold it now as collateral; the whole indebtedness is only $300, but we hold that Lander piece with the endorsement of Dippold & Sons.

Mr. Knox enters objection to the testimony of this witness as incompetent and irrelevant.

Cross-examination.

By Mr. KNOX:

Q. How much did you say you held during 1876?

A. $4,050 in 1876.

Q. How much in 1877?

A. $5,350 in 1877.

Q. That was up to the date of bankruptcy; you held none in 1878?

A. Yes; we held some in 1878.

Q. How much?

A. About $8,000.

Q. That makes a total of how much?

A. Well, it was all paid off as it came due, $17,400.

Q. How much do you hold of it now?

A. We are entirely paid off, with the exception of $300. We hold the Lander piece with Dippold's endorsement as collateral.

Q. How much is that piece?

152 A. $1,500.

Redirect examination.

By Mr. MCCREERY:

Q. Was this paper paid by Dippold & Sons or by your customers?

A. By our customers.

Recross-examination.

By Mr. KNOX:

Q. Do I understand you to say that it was all paid by your customers, even that back in 1876 and 1877?

A. No, sir; only since the bankruptcy. We were caught with about $2,100. I think the money came from our customers.

Q. All the business that you did with Dippold & Sons' paper was paid by them, except what you had on hand at the time of the bankruptcy?

A. Yes, sir; that is my impression.

MICHAEL MUNHALL sworn on behalf of the complainants and examined by Mr. MCCREERY:

Q. State your place of residence and business.

A. I live in Allegheny. I don't know what business I am engaged in. In 1876 I was in the wholesale liquor business.

Q. Had you any connection with the banking business at that time?

A. I was a director in the Duquesne National Bank.

Q. Were you acquainted with the firm of Dippold & Sons?

A. I was.

Q. Were you acquainted with John Dippold, of that firm?

A. Yes, sir.

Q. Did you have any business dealings with Dippold or his firm in the line of commercial paper?

A. I had a note of twelve hundred dollars.

Q. At what time?

A. Drawn by Dippold & McDonald. It was in 1877—August, 1877—I think, I got it.

Q. What was the amount of the note?

A. $1,200.

Q. How did it come into your hands—in the regular line of discounts, or did you purchase it?

A. I think I purchased that note from John B. Patterson.

153 Q. Mr. Patterson, a street broker?

A. Yes; he does a different kind of business—brokerage and selling stocks.

Q. At the date of their bankruptcy, in 1878, had this note been paid?

A. No, sir.

Q. Who was the endorser on this paper?

A. The note originally was Dippold & McDonald's note, payable to the order of the steamer Charles McDonald. Then it was renewed in December, 1877, at ninety days, with the additional indorsement of John Dippold and Sons.

Q. The same form of note, except the additional endorsement?

A. Yes, sir.

Q. That note remained unpaid at the date of bankruptcy?

Objected to as incompetent and irrelevant.

ROBERT ARTHURS sworn on behalf of complainants and examined by Mr. MCCREERY:

Q. State your business and residence.

A. I live in Pittsburgh; am an attorney-at-law and president of the Fifth National Bank.

Q. Since what time have you been president of that institution?

A. Since its organization, early in 1875, I think.

Q. Can you state whether your bank had any business dealings with the firm of Dippold & Sons or John Dippold as early as 1876 or 1875?

A. John Dippold opened an account in the Fifth National Bank for John Dippold & Sons in December, 1875.

Q. Did he continue that account up to the date of bankruptcy?

A. He continued that account until the date of bankruptcy. He had a line of discounts to the amount of $10,000. He kept his discounts pretty much up to the line; sometimes a little over. The figures would run a little over and sometimes less.

Q. Can you state the quality of this paper that you discounted? Was it John Dippold & Sons' or their commercial paper?

A. It was John Dippold & Sons, endorsed by John Dippold, and it was Lander—C. B. Lander; Lander's notes and Lander's acceptances and other paper; Houston, perhaps, sometimes mixed up in it. I could not tell you without examining.

Q. Your dealings were with Dippold and Dippold & Sons?

A. Yes; pretty much all with Dippold.

Q. Can you state whether the board made these discounts on the faith and credit of John Dippold and John Dippold & Sons?

154 A. Dippold represented that he owned a valuable farm. Before making discounts or opening an account the board required a statement from him. The cashier wrote to Beaver county and a letter was submitted, which reported that this farm was a valuable farm and belonged to John Dippold, and the credit was all pretty much on account of John Dippold. The Lander paper was represented by him to be commercial paper, although we believed that Lander and he were connected in some way.

Q. At the date of bankruptcy can you state the amount of paper held by your bank?

A. I think it amounted to eight or nine thousand dollars.

Q. Has this paper been paid?

A. No, sir.

Q. Can you state whether this paper held by you at the date of bankruptcy was original paper or had it been renewals from time to time?

A. Well, it was renewals and original paper in the nature of renewals. They would make new paper to take up old paper. He continued his line of discounts.

Mr. Knox enters an objection to the testimony of this witness as incompetent and irrelevant.

Cross-examination.

By Mr. Knox:

Q. What length of time would this paper run?

A. Usually four months.

MICHAEL MUNHALL recalled, and examined by Mr. McCREERY:

Q. State whether the notes sent to you by Dippold and McDonald represented the signatures of John Dippold and what McDonald.

A. J. Sharp McDonald was the McDonald and the old gentleman John Dippold.

By Mr. KNOX:

Q. Has that note been paid?

A. Yes, sir; it had been paid.

Q. When was it paid?

A. It was paid at different times. Sharp McDonald paid six hundred dollars on it some time after it was due, and it ran along for several months, and he paid three hundred dollars more; he paid the last three hundred dollars several months ago.

Q. It was paid by one of the makers of it?

A. Yes, sir.

155 Adjourned to meet Monday, 12th inst., at 4 o'clock p. m., at the office of Knox & Reed.

Monday, April 12th, 1880, 4 o'clock p. m.—Owing to the inability of the examiner to be present, the hearing was by consent adjourned to Friday, April 16th, 1880, at 4 o'clock p. m., at the office of Knox & Reed.

April 16th, 1880.—The examiner was in attendance at the time and place appointed.

Appearances: D. T. Watson, for complainants; Knox & Reed, for respondents.

GEORGE R. DUNCAN was recalled and examined by Mr. WATSON:

Q. What amount did you state you held of the paper of Dippold & Sons at the time of their bankruptcy, in February, 1878?

A. One thousand dollars.

Q. Did you hold any of their paper prior to that time?

A. Yes, sir.

Q. For how long?

A. We discounted a note, John Dippold & Sons, to the order of S. A. Thompson and K. McKnight & Co., for $246.62, dated June 24, 1876; June 11th, 1877, a draft of Dippold & McDonald on J. Andrews & Co., St. Louis, to the order of J. B. Eads and John Dippold & Sons, $3,158.77; that was renewed by a draft on J. Andrews & Co., Pittsburgh, same amount, October 2, 1877; November 8, 1877, note, J. Dippold & Sons, to the order of Redman, Hayes & Co., $1,150; December 11, 1877, another one for $1,000.

Q. How long before their adjudication was this $1,000 note discounted?

A. December 11, 1877. The one we had at the time of their adjudication was January 15, 1878. That is the one I testified to before, dated January 15, 1878, at four months.

Cross-examination.

By Mr. KNOX:

Mr. Knox enters an objection to the testimony of this witness as incompetent and irrelevant.

Q. At the time of Dippold & Sons' bankruptcy had you any matured paper on hand? They went into bankruptcy February, 1878.

156 A. Yes, sir; I think we had $2,150; would not be sure about it; I think it was Redman Hayes & Co.

Q. Have you proved a claim against this bankrupt?

A. Yes, sir; for one thousand dollars.

Q. That is all they now owe you?

A. Yes, sir; that is all.

CYRUS CLARKE, Jr., was duly sworn, and examined by Mr. WATSON:

Q. You are the cashier of the Tradesmen's National Bank?

A. Yes, sir.

Q. For how many years have you been cashier of that bank?

A. Over twelve.

Q. You were cashier of the bank in 1875, 1876, 1877, and 1878?

A. Yes, sir; since 1867.

Q. State whether you knew John Dippold.

A. I did.

Q. Did the firm of John Dippold & Sons keep an account at your bank?

A. They did.

Q. Did you discount paper for them, and on the credit of John Dippold & Sons and John Dippold?

A. Yes, sir; we did.

Q. Please give us a list of the paper you discounted, from 1875 up.

A. I didn't make out a full list of all the paper we discounted from 1875 up. I can give you the total amounts the firm owed us at different times from 1875. January 1st, 1874, they owed of accommodation paper about $22,000, that being paper of Dippold & Sons and Dippold, Sons & Goose, which was the name of their Louisville firm; in January, 1875, they owed, accommodation paper, $37,000; paper of Dippold & Sons and of Dippold & Sons, Louisville, $2,500 additional; in January, 1876, at the date of the deed named in the bill, their line of accommodation paper was $40,000, and of paper of the Louisville house, $11,140.

Q. Is that all?

A. Well, I don't appear to have a statement for January, 1877. I can give it to you, though, approximately. They owed us in January, 1877, about $20,000 or $25,000 accommodation paper of the firm here, and $10,000 or $11,000 of the Louisville firm; that is about all, I guess, in January, 1877.

Q. Well, in January, 1878?

A. They owed us $17,500, accommodation paper—paper drawn

by Dippold & Sons and endorsed by John Dippold; in Jan-
157 uary, 1878, about $7,000 of the Louisville firm, and some thousands of other paper discounted for them, on which they were endorsers.

Q. How much of that?

A. I cannot give you the exact amount; didn't figure it out to give that.

Q. Can you give it approximately?

A. About $20,000 or $25,000. Most of it was paid during January, 1878.

Q. How much did the firm of John Dippold & Sons or John Dippold owe your bank when they went into bankruptcy?

A. Their entire liability, including endorsements on notes which were not paid, was about $26,000.

Q. You can state whether for two or three or four years preceding their adjudication in bankruptcy their principal account had been kept with your bank.

A. Yes; the principal account.

Q. Who was known in financial circles as the moneyed man of that firm of John Dippold & Sons?

A. John Dippold.

Q. You mean the old gentleman?

A. Yes; the old gentleman.

Q. Was the fact of his ownership of real estate in Beaver county known?

A. Yes, sir; it was; it was so understood.

Q. State whether in the January preceding the adjudication in bankruptcy you had any conversation with old man Dippold with reference to his ownership of the property in the township of Economy, in Beaver county, concerning which this bill is filed.

A. I had frequent conversations with him regarding it, and the last one was in January, 1878, at the date of the renewal of one of their notes, at which interview he said to me that the property there was all in his own name except a little piece, which had some defect in the title and it was in his wife's name, but the rest was all in his own name—the farm and all the property—and there was nothing against it.

Q. Had you had any conversation with him prior to that time with reference to the value of that property?

A. Yes, sir; frequently.

Q. What did he say with reference to that?

A. He stated that he valued it at $500 an acre and at different values down, I think, as low as $200 or $250 an acre.

Q. Do you remember when it was that he valued it at $500 an acre?

A. Well, I think that was before the panic, in 1873 or about that time, when real estate was very high.

Q. And after that what valuation was put upon it?

A. I had so many conversations about it that I am at a
158 loss to say exactly, only that he frequently talked about mortgaging it and raising as much as $20,000 on the mort-

gage on his farm. He valued it highly enough to consider it good security for that much money.

Q. How do you mean talked about mortgaging it?

A. He talked about paying off all his notes by putting a mortgage on the farm, but still said he didn't want to do it. He talked about borrowing money from the Economites. They were his next neighbors.

Testimony of Mr. Clarke for the present suspended.

Mr. Knox enters an objection to the testimony of this witness as incompetent and irrelevant.

EDWARD R. KRAMER sworn on behalf of complainants and examined by Mr. WATSON:

Q. You are cashier of what bank?

A. First National of Allegheny.

Q. Did the firm of John Dippold & Sons have any discounts at your bank when they went into bankruptcy?

A. Yes, sir.

Q. What was it, sir?

A. It was a note for $2,500.

Q. Whose note?

A. It was signed by J. Dippold & Sons.

Q. To whose order?

A. To the order of W. B. Houston, first endorser; steamer C. McDonald and owners, second endorser, and J. Dippold, individually, third endorser.

Q. To whom was the money paid on that note?

A. Dippold & Sons.

Q. Did you still hold that note when they went into bankruptcy?

A. Yes, sir.

Q. Had the firm of Dippold & Sons had any dealings with your bank prior to that?

A. Yes. This same note had been discounted May 15, 1877, and renewed twice.

Q. Did they have any discounts before that with you?

A. Well, not immediately before it. They may have had some before, but if they had they had been paid. I could not say without referring to our books.

Q. Did they keep an account with you?

A. No, sir. This was just an outside piece of paper.

Q. Were you individually acquainted with John Dippold?

A. Yes, sir.

159 Q. Do you know on whose credit that note was discounted?

A. It was done on the credit of John Dippold himself. We supposed he was very wealthy at the time.

Mr. Knox enters an objection to the testimony of this witness as incompetent and irrelevant.

Cross-examination.

By Mr. KNOX:

Q. When was the original note discounted of which that was a renewal?

A. May 15, 1877.

Q. Who were the makers and endorsers of that note?

A. Dippold & McDonald were the drawers; steamer Charlie McDonald and owners were the endorsers; note renewed by J. Dippold & Sons.

Q. At the next renewal who were the endorsers?

A. The same drawer; first endorser the same, and second endorser was J. Dippold individually.

Q. That was all that was on the paper then?

A. Yes, sir.

Q. Third renewal you added Mr. Houston?

A. Third renewal drawers the same. We asked them for additional security and they gave us W. B. Houston as first endorser; second and third the same as in preceding note.

Q. Then John Dippold, individually, was not on that note at the time it was originally discounted?

A. No, sir.

Q. At the time of the last renewal you thought additional endorsement was necessary, and you had Houston go on?

A. Yes, sir.

Redirect examination.

Q. John Dippold was a member of the firm of Dippold & McDonald?

A. Yes, sir.

Q. I understood you to say that Dippold & Sons got the proceeds of that note?

A. Yes, sir.

GEORGE R. DUNCAN was recalled.

By Mr. WATSON:

Q. On whose credit was the note of one thousand dollars, that you testified to, discounted?

160 A. On the credit of John Dippold, the old man.

Cross-examination.

By Mr. KNOX:

Q. Who else was on that paper?

A. W. B. Houston and Hugh Flanigan.

Q. Was the note an original note?

A. Yes, sir.

Q. Who received the proceeds of that paper?

A. Houston.

Adjourned to meet, at same place, Wednesday, April 21st, 1880, at 3.30 p. m.

Wednesday, April 21, 1880.—Met at time and place appointed.

Appearances: For complainants, Mr. W. S. Erskine; for respondents, Messrs. Knox & Reed.

F. H. ANDERSON sworn, and examined by Mr. ERSKINE:

Q. What business are you in?
A. I am confidential clerk for J. S. Neill.
Q. What business is J. S. Neill in?
A. The coal business.
Q. Do you know John Dippold, of the firm of Dippold & Sons?
A. Yes, sir.
Q. Did you do any business for them—your firm of Neill?
A. Yes, sir; we did business with them.
Q. What was the nature of your business?
A. We loaded coal for them.
Q. How long had you been loading coal for them?
A. Well, we had been loading off and on for them for two or three years before the bankruptcy.
Q. Did you have a running account with Dippold & Sons?
A. Yes, sir.
Q. Did they owe you any money at the time of the bankruptcy?
A. Yes, sir.
Q. How much?
A. Between seven and eight thousand dollars.
Q. Did you know, in the capacity of confidential clerk for J. S. Neill, that John Dippold owned a certain property in Beaver county?
A. Well, that was always our impression.
161 Q. Did you load coal for him and allow the firm of Dippold & Sons and John Dippold to have credit with your firm on account of the property in Beaver county?
A. Yes; that was one of the reasons.
Q. Did you have frequent conversations with John Dippold, the old man?
A. I had one conversation with him in regard to his property.
Q. With regard to this property?
A. Yes, sir.
Q. Did he lead you to suppose at the time you had this conversation with him that he was the owner of that property?

Objected to by Mr. Reed.

Q. What did he say at that time—the substance of it as near as you can recollect?
A. Well, I met Dippold on the Monongahela House steps some two or three months before they went into bankruptcy. In explanation of this I may say that Mr. Neill had got very much afraid of them, as they had been renewing a good deal, and Mr. Neill said to me just a short time before my conversation with Dippold that he didn't think that he would load any more for them. He was getting afraid of them; that we had enough of it. I met Dippold and from this conversation I was anxious to find out something about his

property. I was talking about my place and he was telling me about his farm. He said he had a splendid farm there, and had been building a good deal of fence that winter; said it was down at Baden. I knew where he lived; that was about all the conversation. I had not any doubt but what he owned the farm there. He just talked about his farm.

Q. Did you continue to load coal for him after that under the impression that he was the owner of that farm?

A. I can't say positively whether we gave him any more after that or not. We have loaded coal for him believing that he owned that farm.

Q. Whom did you regard as the solvent member of that firm?

A. John Dippold, the old man. We talked about it often.

Q. How long before the bankruptcy did this conversation at the Monongahela House occur?

A. Well, two or three months before the bankruptcy. They were renewing a good deal at the time; that was why Mr. Neill and I talked about it. Mr. Neill was getting afraid.

Mr. Reed objects to the testimony of this witness as incompetent and irrelevant.

162 Cross-examination.

By Mr. REED:

Q. Did he tell you what incumbrances there were on this property?

A. No, sir; he said nothing about that.

Adjourned to meet, at same place, Saturday, April 24th, 1880, at 2 o'clock p. m.

SATURDAY, *April* 24, 1880—2 p. m.

Appearances: None for complainants; Knox & Reed for respondents.

Adjourned to meet by agreement.

MONDAY, *May* 31, 1880—3 p. m.

Met, by agreement, at office of Knox & Reed.

Appearances: Mr. D. T. Watson, for complainants; Messrs. Knox & Reed, for respondents.

CYRUS CLARKE, Jr., recalled, and examined by Mr. WATSON:

Q. You have stated that in January, 1876, at the date of the deed concerning which this bill is filed, the line of discounts for Dippold & Sons at your bank was $40,000—about $40,000—and you have stated that they were indebted to your bank when they went into bankruptcy about $26,000. Do you know how the difference was paid, and out of what moneys Dippold paid it, if he did pay it?

A. Yes, sir; I do. He owed us in January, 1876, or the firm of Dippold & Sons owed us on their own paper, endorsed by John Dippold, $40,000. The first note matured January 27, 1876, at which

date it was not paid, but marked "Held" on the discount book and marked "Paid" on the 2d of February out of proceeds of a mortgage which was negotiated by John Dippold on the property at Sewickley, known as Sharp McDonald's property. I had this from John Dippold at the time and from seeing the papers and making a note of it at the time. The property was held in John Dippold's name up to that time, when they stated to me that he deeded the property to Sharp McDonald, and that it was Sharp who negotiated this money.

Q. You are talking now about the Sewickley property?

163 A. Yes; in which Sharp McDonald now lives. The mortgage was $10,000. Out of that they paid us $5,000; the note due January 27. The next note matured on February 28, 1876; was marked "Held" on the discount book until March 15, at which date it was charged to the account of John Dippold & Sons, and at which date there was credited to the account of Dippold & Sons, to offset the charge, the proceeds of a draft on Lander, of Louisville, $2,500, and a check of the Dollar Savings Bank on the Iron City National Bank for $7,831, which was also the proceeds of an additional mortgage, negotiated at the Dollar Savings Bank, upon Dippold's coal works, through the instrumentality of Mr. Van Kirk, our vice-president. The next note, maturing March 23, 1876, was charged to the account of Dippold & Sons, and there was credited, to offset the charge, the proceeds of three coal notes drawn by Collier, Budd & Co., of Cincinnati, and by Montgomery & Co., of Cincinnati. The next note, for $10,000, maturing April 6, 1876, was renewed four months, and renewed continuously until the time of the failure. The next note, maturing May 3, 1876, for $10,000, was renewed continuously until February 11, 1877, when it was charged to their account, and a new note taken for $7,500, which new note was carried until the failure. That is the accommodation paper; it left it at the time of the failure $17,500. The reductions were all made as I have above stated. I did not state how the $2,500 on the last $10,000 note was paid. It was paid out of the proceeds of a suit which Dippold brought against the Pittsburgh, Virginia and Charleston Railroad Company for damages done to his coal works by their line running through his improvements. He compromised that suit for $8,500 about Sept. 26, 1876. The payments were $3,000 cash, one note at six months for $2,750, and one at twelve months for $2,750, and it was out of this money that he was able to reduce our claim $2,500.

Q. In 1876 and during that year was Dippold any time at your bank?

A. Yes, sir.

Q. Did he at any time during that year say anything to you about this deed to Philip Fable?

A. He did not.

Q. Had your bank any knowledge of it at all?

A. None whatever.

Q. Mr. Dippold has stated that in January, 1876, when he made the deed to Philip Fable, that Philip Fable paid him $10,000 in

cash. I wish you would state whether you have examined your books to see whether at or about that time any deposit of that kind was made in your bank.

A. I have examined our books and took off a transcript of the account from January 1st to May 16th, 1876. There is no deposit of any kind made which is not accounted for in other ways
164 than by money received from Philip Fable. I checked our account with our account as it is kept on Dippold & Sons' books, and I find the entries correspond.

Q. Did you take Dippold & Sons' books to see the account they kept there with your bank and then check that with your own account?

A. I took the transcript off our books first and went to Dippold & Sons' books with it, and found every entry checked, and every credit that we have is charged on their books, and every item is explained as to what it comes from.

Q. Have you with you the books of Dippold & Sons?

A. Yes, sir; they are here; the journal and the ledger.

Q. Where did you get them?

A. In your office.

The journal and the ledger were marked, respectively, Exhibits "A" and "B," May 31st, 1880, W. Scott, by the examiner.

Mr. CLARKE: I wish to correct a statement made above, as to the mortgage on Sharp McDonald's property. I don't know that I saw the mortgage given by Sharp McDonald or by Dippold, whichever gave it, but I knew of the transaction at the time, and knew that the money was borrowed from the firm of Evans, Dallas & Gilmore or one member of that firm.

Q. Are you a practical book-keeper?

A. I think I am.

Q. Did you make an examination of the books that you have produced of Dippold & Sons to ascertain whether there were any dealings recorded in those books with Philip Fable, and as to whether any of this money that he says he got of Philip Fable could be traced in his books?

A. I don't remember whether I looked—whether there was an account opened with Philip Fable, but I examined their bills payable account and checked off every note that was credited with having been paid for several months covering the period during which Dippold says he received the money from Fable, and I find the payments of the notes all accounted for otherwise than by money received from Fable.

Cross-examined by Mr. KNOX:

Q. Are you in the habit of noting on the books of the bank the sources from which your customers derive money used to pay notes and obligations in the bank?

A. No, sir; it is not customary; it is done now and then.
165 Q. Had you any particular reason why it was done at this time in Dippold's case?

A. Well, the note I refer to was marked "Held," and when a note is held and paid afterwards there is usually some explanation.

Q. Well, with regard, say, to this compromise with the P., V. & C. R. R. Co., and application of the proceeds, through whom did you derive that information?

A. Dippold consulted me about the suit with the P., V. & C. R. R. Co. frequently while it was pending, and when the compromise was made he informed me of the fact and showed me the notes. I afterwards verified it by an inquiry at the P., V. & C. R. R. office.

Complainants rest, with the understanding, however, that if they wish they may call Mr. Dickson with reference to the books of Dippold & Son.

And now, Saturday, June 25, 1882, by agreement of the parties, met at the office of Knox & Reed.

Appearances: Mr. D. T. Watson, for the complainants, and Mr. H. W. Weir and Mr. P. C. Knox, for the respondents.

J. SHARP MCDONALD, called by respondents, sworn, and examined by Mr. WEIR:

Q. What is your age?
A. I am 39 years old, nearly—38½.
Q. Where do you reside?
A. Sewickley.
Q. What business are you engaged in now?
A. I am engaged in the coal trade now, chiefly.
Q. Has that been your business for a number of years past?
A. Off and on.
Q. Do you know John Dippold?
A. Yes, sir.
Q. The sons, John H., Jacob, Martin?
A. All of them.
Q. What relation is Mr. John Dippold, Sr., to you?
A. My first wife was his daughter; he was my father-in-law.
Q. What relation, if any, are you to Philip Fable?
A. He married a Dippold, too.
Q. Is his wife living?
A. Yes, sir.
Q. Your first wife is dead?
A. Yes, sir.
Q. Where did John Dippold reside in 1876?
A. Near Baden, Beaver county.
Q. Do you know the farm that he resided on then?
166 A. Yes, sir.
Q. What business was he engaged in prior to 1876?
A. The coal business, and he was building bridges and tunnels for the railroad company; chiefly in coal.
Q. Do you know personally the farm that he lives on?
A. I know part of it; there is a good deal of hill land; I have been over it—hunted over it.

Q. Will you state if you have any personal knowledge of his borrowing any money from his son-in-law, Philip Fable, prior to 1876?

A. Yes, I went to Louisville to negotiate a loan for him.

Q. State the facts and circumstances of the negotiation.

A. I went down there at Dippold's instigation. I went to raise money there, and saw Mr. Fable, and Fable didn't want at first to advance the money, but finally agreed to buy the property, and it resulted in a negotiation of that kind; he had already advanced Mr. Dippold some money.

To Mr. WATSON: I only know that from what he said and what Mr. Dippold admitted.

Objection by Mr. Watson.

Q. State, prior to the negotiation that you have referred to, if you have any knowledge of Mr. Dippold borrowing money from Mr. Fable; and, if so, from whom did you learn the fact?

A. I learned the fact from Mrs. Dippold and from Martin Dippold, who was then at Louisville, and I learned it from Mr. Fable; he told me that when I went there.

Q. What amount?

(Objection by Mr. Watson to any testimony based on the declarations of either Fable or Dippold to witness.)

A. About ten thousand dollars, to my knowledge now.

Q. State what knowledge you have of Mr. Dippold wanting to borrow a further sum from Mr. Fable.

A. Mr. Dippold wanted me to go down and see Fable for him; he was wanting to raise a good deal of money, and the property at Sewickley was sold at that time; and I was then not actively engaged in any business, and was discounting paper and raising loans in different ways; that was before the date of the deeds. I can't just fix the date now, but it was before the date of the deeds.

Q. Proceed and state all the facts and circumstances of that negotiation with Mr. Fable for Mr. Dippold and what it resulted in.

A. I spent a day or so with Mr. Fable, and he said he had advanced $10,000 to them now——

167 (Objection by Mr. Watson to Fable's declaration.)

Well, it resulted in his agreeing to take the property at $28,000. I cannot give you all the details, if that is what you want; there was a good deal of trouble about the thing.

Q. In what way did it result in Mr. Fable taking the property?

A. I came home and told Mr. Dippold, and the deeds were made out, and Mr. Fable came on and settled up the transaction.

Q. State what Mr. Fable agreed to do while in your negotiation with him.

A. He agreed to buy the property outright for $28,000.

Q. On what terms?

A. He was to pay $10,000 more in cash and the other was to be

notes. I have now forgotten that, but I think the notes were divided up. I filled them up myself, but I don't know the time. I think, maybe, it was a year.

Q. What part of the $28,000 was paid cash and what part notes?

A. There was $10,000 that he had received before I knew anything about the transaction. He paid him $10,000 more and the balance was $8,000 of notes.

Q. How many notes were the $8,000 divided into, if you remember?

A. I don't remember. I think there was two or three, perhaps four, of them. I think, maybe, they were drawn at four and six months—I don't mind about that. I think the object was to get as much money as possible from Mr. Fable. Some of them were made at four months and others longer.

Q. You communicated Mr. Fable's proposition to Mr. Dippold, did you?

A. Yes, sir.

Q. What did Mr. Dippold agree to do?

A. Well, he agreed to sell him the property at $28,000, and he gave me the old deeds to get the new ones drawn by.

Q. State whether the property consisted of two parts or one part.

A. There was two parts—two tracts of land. One was a large tract and the other was the homestead where he lived there.

Q. What did Dippold request you to do when you informed him of Mr. Fable's offer?

A. He requested me to get deeds made out again Fable came up.

Q. Did you have the deeds prepared?

A. Yes, sir; I had the deeds prepared and had them acknowledged. Mr. Fable agreed to come up in a day or two.

Q. By whom were they written?

A. They were written by young Jake Dippold. I was present when they were written.

168 Q. Under whose direction and supervision?

A. Under my own, I think; possibly one of them may have been written by me (examining papers). They are written by Jake Dippold.

Deed dated January 22, 1876, shown witness.

Q. State whether that is one of the deeds that you directed to be made out in pursuance of the negotiations between these parties.

A. Yes; this is one of the deeds.

(Paper marked by the examiner "Exhibit A. 6—24—'82. W. Scott.")

Q. Before whom was it acknowledged?

A. Frank Smith, a notary public.

Deed dated January 26, 1876, shown witness.

Q. State who filled out the body of that deed.

A. The body of this deed was filled out by Jacob Dippold, and it was acknowledged before Frank Smith. This is for the larger tract of land.

(Paper marked by the examiner "Exhibit B. 6—24—'82. W. Scott.")

Q. Are these the deeds that were prepared in pursuance of the negotiation of sale and purchase to which you have referred?

(Objection by Mr. Watson to the question as leading.)

A. Yes, sir.

Q. Where were they prepared?

A. I don't know whether these deeds were written here or in Sewickley; I don't remember where they were prepared. They were acknowledged at Sewickley. I took Frank Smith down there and Mr. and Mrs. Dippold came up to my house, I think.

Q. Were they acknowledged on the date that the acknowledgment bears date?

A. Yes; I would suppose so.

Q. How long after that was it until Mr. Fable came up from Louisville?

A. Well, it was but a short time; I don't think it was that same day. The object was to have these deeds ready again he
169 would come. I don't know whether it was that day or the next day, but very shortly afterwards.

Q. Where did he and Mr. Dippold meet first after he came up?

A. We met there at our house. I think Mr. Fable and his wife came there for tea, and Mr. Dippold came there, too, to settle the transaction.

Q. State what transpired when they met there in reference to the sale and purchase.

A. When they met there they concluded it. Mr. Fable paid over some ten thousand dollars in money, and notes for eight thousand dollars, I think. There was $10,000 had been paid before.

Mr. WATSON:

Q. Do you know that of your own knowledge?

A. Yes. Well, I don't know only what they both said. I know it in a way, too, from other business connections at Louisville. I know that Martin Dippold had sold some coal to Mr. Ford, and they had used that paper and Ford had failed, and the firm there had to meet it, and they used the money that they got from Fable to do that with. That was the way it came to my knowledge in the first place. That was the first $10,000. There was never any question raised about it by the parties. Of course, I didn't see the money paid.

Q. How much money was paid on the day that the deeds were delivered?

A. $10,000.

Q. By whom was it paid and to whom?

A. It was paid to Mr. Dippold by Philip Fable.

Q. In your presence?

A. Yes, sir; and I filled out the notes for the balance, but I don't remember the time of those notes now. It is a good while ago.

Q. What kind of money was it?

A. Greenbacks; paper money.

Q. To whom were the deeds delivered and by whom?

A. They were delivered to Mr. Fable by me or Mr. Dippold. The deeds were in my possession until he came there. After they were acknowledged I locked them up in the bookcase until they came there, and I delivered them either to Fable or to Dippold; but Fable got the deeds, at all events.

Q. Who was present at the time?

A. Well, I don't know. I know we three were there—Mr. Dippold, Mr. Fable, and myself, and I think possibly Mrs. Dippold may have been there, and Fable's wife, but I am not certain as to that. They were there, off and on, a great deal; nobody else that I know of now.

Q. How soon after that did Mr. Fable return home?

170 A. That I can't remember; I was not taking any account of that.

Q. State what he did with the deeds.

A. He took them with him at that time when he went home.

Q. State what you know about the deeds afterwards.

A. The deeds were returned to me to be recorded.

Q. By whom?

A. By Mr. Fable.

Q. How long after that?

A. I can't just give you the time, but it was a long time. I got them some time, probably six or eight months, before Mr. Dippold failed, but I didn't record them at that time. I neglected to do so.

Q. How soon after Mr. Fable returned home did he send you the deeds back?

A. That was a long time; possibly a year or more.

Q. When you met there and the purchase and sale was concluded you say the deeds were delivered to Mr. Fable. What did he do with them?

A. He took them home with him.

Q. When did you next see the deeds?

A. He sent them to me for to record some time afterward—a good while afterward—probably over a year; I can't remember the time.

Q. What did he send them to you for?

A. To be recorded.

Q. Did you have them recorded?

A. I didn't just then; I laid them on the safe; I neglected to do it, and the fact of the matter was I didn't record them until Mr. Dippold was about failing. Then I was scared at what I had done and I sent young Whitsell down to record them—Frank Whitsell, a young attorney from Sewickley.

Adjourned to meet Monday, June 26th, 1882, at 10 a. m., at office of Knox & Reed.

W. SCOTT, *Examiner.*

And now, Monday, June 26, 1882, at 10 a. m., met at office of Knox & Reed, and without further proceeding adjourned to meet at same place, Tuesday, June 27, at 3 p. m.

And now, Tuesday, June 27, 1882, met at 3 p. m., pursuant to adjournment.

171 Appearances as at last hearing—Mr. Watson, for plaintiffs; Messrs. Weir and Knox, for defendants.

J. SHARP MCDONALD resumed the stand and was cross-examined by Mr. WATSON:

Q. What business were you engaged in in January, 1876?

A. Well, I think we were just commencing the jetties then. I was in coal, too.

Q. Please state with whom and in what capacity.

A. I was in the coal trade by myself, I guess, in 1876. I don't think we commenced the jetties till 1877.

Q. Had you then been discharged in bankruptcy?

A. Yes, sir; I was discharged in 1875.

Q. Do you remember what time of year?

A. I think it was August, 1875; I have now forgotten.

Q. You had been a member of what firm?

A. I had been a member of the firm of D. A. & J. S. McDonald.

Q. Do you now remember the date of the application in bankruptcy of John Dippold?

A. No, sir.

Q. Well, it was the day after this deed was recorded, was it not—this deed that I now hold in my hand, to Philip Fable, which was recorded February 16?

A. Well, it was very soon after that, I know, because I met you and Mr. Barton and some other parties in C. B. M. Smith's office; they were trying to get them in, and I came there at somebody's request, and thought I could persuade young John Dippold to file a petition, and there was some talk between you and Mr. Barton and myself in regard to that matter, and then I sent these deeds down to have them recorded.

Q. You say they were executed in January, 1876?

A. Yes, sir.

Q. They were recorded two years afterwards—the day before Dippold filed his petition in bankruptcy?

A. I suppose that appears by the paper; yes, that is correct.

Q. How long had you had possession of them prior to the time they were recorded?

A. It may have been three months; I am not certain about that.

Q. Might it not have been longer?

A. No; I don't think so. I have been trying to trace that in my mind.

Q. Where were they prior to the time that you got them?

A. Fable had them.

Q. Whereabouts had he them?

A. I don't know that; I know he sent them to me.

172 Q. How did he send them to you?

A. I think by mail.

Q. Are you certain of it?

A. I am not positive whether he sent them by mail or by some parties coming up.

Q. Did he send them by registered letter, do you think?

A. No; I think not.

Q. Can you recall now whether it was by mail or express, or by some person who brought them up?

A. I think I had been to the jetties, and when I came up home on a visit I think probably those deeds may have been handed to me by my clerk.

Q. Who was then your clerk?

A. A little fellow by the name of Went; I am only giving you a theory about them; his first name is Fred; I don't know where he is now; I saw him a few days ago on the street.

Q. Were the deeds then in an envelope?

A. I think they were—yes, sir.

Q. Had they any post-marks on them?

A. That is going into the thing a little deeper than I know. I know I got those deeds from Philip Fable, but all the details I can't remember. Whether I got them by mail or whether they were there that time I came up I can't just tell you. I paid no attention to that.

Q. Do I understand you to say that you don't know how the deeds got from Louisville to Pittsburgh?

A. No; I do not. I could give you a theory how I suppose they came.

Q. Can you give us when it was you got the deeds from your clerk?

A. No; I can't give you that, as to the date. I may have had them three months or two months.

Q. You think you had them no longer?

A. No; I know I hadn't.

Q. What did you do with them when you got them?

A. I put them in the safe there.

Q. Where?

A. In the office; Dippold's safe. We had our offices together and had one safe.

Q. With whom were you then in partnership?

A. With John Dippold, in the jetties?

Q. Who else?

A. Nobody else.

Q. What was the name of the firm?

A. Dippold & McDonald; it was composed of John Dippold and myself.

173 Q. Did you have any conversation with John Dippold about the deeds?

A. I think I did.

Q. At the time you received them?

A. Yes, sir.

Q. Please give us what that conversation was.

A. My impression of it is that Dippold didn't want me to record the deeds.

Q. Why not?

A. He said it would interfere with him in borrowing money.

Q. Did you agree with him not to do it?

A. That was one reason. There were two reasons. If you want me to give them I will. It may affect me a little, but I want to tell the truth and the whole tauth. I had been sending Dippold a good deal of Eads' paper and a good deal of money, and that time when I came home I found out there were some notes out of Dippold & McDonald's. I saw him about this thing, and he said the concern was in trouble, and he asked me to use some of this Eads paper; said he had used some of it at the Tradesmen's Bank. I objected, but it went on in that manner, and I didn't wish to record those deeds and hurry this thing on Dippold, because I wanted to get my own matters straightened. I held them just as long as I could, and then I hurried them off and had them recorded.

Q. You held them so that you would not interfere with Dippold's credit in the banks in Pittsburgh?

A. That was one reason; another was that I thought it would bust him. I wanted to get my own matters straightened; that was my idea of it.

Q. How did you come to record them the day you did?

A. I was afraid I would get into trouble with Fable. I had had them three months and hadn't recorded them; so I told Whitsell to go right down and not come back without having it done, and I guess he paid extra for getting them recorded at once.

Q. At the time you sent them down did you know that Dippold was insolvent?

A. I knew that you and other parties were trying to force him into bankruptcy.

Q. Did you know that he was insolvent?

A. I don't believe to-day that he was insolvent.

Q. Did you know he was unable to pay his debts?

A. I knew he was in trouble.

Q. Did you know there were legal proceedings in bankruptcy commenced against him?

A. Yes; you told me that.

Q. What other firm was Dippold a member of at this time?

174 A. The firm in Louisville, the coal yard there. The name was Dippold & Sons. He and his boys, I think, were all in it.

Q. He and what boys?

A. I think all his boys, except probably Fred.

Q. Give us the names.

A. John and Martin and Jacob. The younger boy was not of age.

Q. What was the capital stock of Dippold & McDonald?

WITNESS: *A.* I don't believe he (Mr. Watson) has any right to know that.

Mr. WEIR: Objected to as not proper cross-examination, and the witness instructed not to answer.

At the request of plaintiffs' counsel question repeated to witness by the examiner.

WITNESS: I say it is none of his business. I don't think he has any right to ask that question in this case, and I don't propose to answer.

Q. Who owned the steamer Charlie McDonald in January, 1876?

A. I don't know who owned her then. I owned her at one time.

Q. Who in January, 1876, owned the steamer Charles McDonald?

Objected to by Mr. Weir as not proper cross-examination and as irrelevant.

A. I don't know now without referring to the papers.

Q. Do you mean to swear that you didn't? Who then owned or had interests in the steamer Charlie McDonald?

A. I can't tell without referring to the papers.

Q. Did John Dippold own her?

Objection by Mr. Weir.

A. He either owned her or I did. I bought her from him. I don't know the date without the papers.

Q. When did you record the bill of sale?

Objection by Mr. Weir.

A. The same answer applies. I don't know that without referring to the papers.

Q. Did you record it before his bankruptcy; and, if so, how long?

Objection by Mr. Weir.

175 A. I recorded it the day I bought her, whenever that was.

Q. How many barges that formerly were owned by Dippold did you own after Dippold went into bankruptcy?

Objection by Mr. Weir.

A. I am not being examined in that case now. I don't propose to allow you or any other man to open a case that has been gone over three or four times already. If you propose to examine me on this Dippold matter you can do it.

Q. You decline to answer the question with reference to your connection with the property of John Dippold?

A. Yes; I do.

Mr. WEIR: We object to all questions on this subject as not proper cross-examination, immaterial, and irrelevant.

Q. What did you contribute to the partnership stock of Dippold & McDonald?

Objection as above.

A. I decline to answer that on the same grounds.

Q. Will you tell us what Dippold contributed?

Objection as above.

A. I don't know that now. I could not tell you if I wished.

Q. Did he contribute the steamer Charlie McDonald and any barges?

Objection as above.

A. No, sir; he did not.
Q. Did he contribute any barges?

Objection as above.

A. I believe he did, sir.
Q. Do you know how many?

Objection as above.

A. No, sir; I do not.

Q. Can you tell us this—the day that Dippold was adjudged
176 a bankrupt how many of the steamers and barges that John Dippold or Dippold & Sons had owned did you own?

Objection as above.

A. I want to answer a part of that question. I didn't own any of the barges that belonged to Dippold & Sons. I owned that which belonged to Dippold & McDonald and own them to-day.
Q. How many of the barges and steamboats that Dippold was formerly interested in did you own after his adjudication in bankruptcy?

Objection as above.

A. I took charge of all the property of Dippold & McDonald, consisting chiefly of barges. I don't know how many. I could not give you about how many. Not twenty. It may have been a dozen of Dippold & McDonald's barges. I don't know about that now. I could tell by reference.
Q. What about any steamboats?

Objection as above.

A. I had no steamboats of John Dippold. I made a mistake, I didn't keep one. I had none of Dippold & McDonald's; they had no steamboats.
Q. The day he was adjudged a bankrupt you were the owner of the Charlie McDonald?

Objection as above.

A. Yes; and had been for a long time.
Q. What other steamboats, if any, were you the owner of that he had been interested in?

Objection as above.

A. Not any.
Q. What did you pay Dippold for the Charlie McDonald?

Objection as above.

A. I will not answer that.

Mr. WIER to witness:

Unless you are so directed by the court, is that what you mean?

177 Q. Who is living on this farm described in the Fable deeds?

A. I think Dippold is.

Q. You know he is?

A. No; I really do not. I have not been down there for a couple of years.

Q. Has there been any change in the possession of the property since this deed was made, in 1876?

A. No; I don't think there has been any change whatever.

Q. Dippold is still living on it?

A. Yes, sir.

Q. Has he paid Fable any rent?

A. I don't know a thing about that.

Q. How much, if any, money did you see paid by Fable to John Dippold?

A. $10,000.

Q. In what kind of notes was it paid?

A. It was paid in money. I don't know the kind of notes; don't know the size of the notes; don't know whether there were any $500 or $1,000 notes among them.

Q. Was it a large pile of money?

A. My impression is that it was. They may have been large bills. That is mere theory.

Q. Did you count the money?

A. I would not be certain about that. I have no recollection about it. I only fix the amount by settling up the transaction.

Q. Then you don't know that there was $10,000?

A. I know it just like that—from talking with them about it before. I saw Dippold count it.

Q. Did you follow him?

A. No.

Q. Then you can't say there was $10,000 paid, can you?

A. Yes; I am firmly convinced of that fact.

Q. How, if you didn't count it or follow him when he did count it?

A. That often occurs, don't it? You see money paid over and transactions going on and know how much is paid.

Q. Without counting it or following any one else count it?

A. That's too technical. Well, the supposition is there was $10,000 paid. I seen the money pass between them, and am firmly convinced there was $10,000 there.

Q. You are not able to tell the size of the bills?

A. No, sir.

Q. And you didn't follow any one else in counting it?

A. No, sir.

Q. What did Dippold do with the money when he got it?

A. That's too rich for my blood. I can't tell you that.

178 Q. Where did he put it?

A. I can't tell you that.

Q. Did he put it in his pocket-book?

A. I suppose so. I can't tell where he put it or what he did with it.

Q. Did he leave it at your house?

A. Oh, no; I would have got it, you know.

Q. When did he leave your house?

A. That is a hard question to answer. I can't place all those things.

Q. What time of night was it?

A. I think it was daytime. I don't think any of them stayed all night there. The others left about six. I think we probably went down in the noon train, maybe at one o'clock.

Q. Who went down?

A. Myself and probably Mr. Dippold.

Q. Was Fable there when you got there?

A. I don't now remember how that was. Fable was there, and Dippold was there, but how they got there I can't tell you.

Q. Had you seen Fable in town?

A. I don't know that either.

Q. Did you have any appointment with Fable?

A. Yes; I think so. I don't know whether he came or whether it was Dippold.

Q. Why did you go to your house?

A. The deeds were there. I can't tell you any particular reason why.

Q. You went down from the city to your house?

A. Yes; I suppose because—I don't think I can give you any reason why that was. I know the reason why the deeds were acknowledged there was that Mrs. Dippold didn't come to town. Frank Smith went down.

Q. When was that?

A. It is on the deeds.

Q. How long before Fable being there was it that the acknowledgments were taken?

A. As I have stated on Saturday last, the arrangement was made to transfer and sell the property to Fable and the transfer, being made, was to be ready when he came up, and I had Smith go down there and acknowledge the deeds. Whether it was that day or two or three days after that he came I can't remember.

Q. Fable wasn't there the day Smith was there, was he?

A. No, sir; I don't think he was.

Q. How far is your house from Pittsburgh?

A. About 13 miles.

179 Q. Did Fable go up to town that night?

A. That I don't know.

Q. Did Dippold and Fable go away together?

A. That I don't know. It is too long to remember those things. If that had occurred three or four weeks ago a man might tell.

Q. The trouble is your recollection is very good on one side and

very bad on the other. Did you say anything to Dippold at the time with reference to the use of this money?

A. Dippold wanted to raise a good deal of money——

Q. Did you say anything to him at the time about the use of this money that Fable paid to him?

A. How he should use it, do you mean?

Q. Did you say anything to him about the use of the money at the time?

A. I don't understand the question.

Q. I ask you what, if anything, did you say to Dippold at the time that Fable paid him this money about the use of this money by Dippold?

A. I don't know that I said anything to him.

Q. No conversation?

A. They had notes to pay. He had sunk some coal and had given notes for that.

Q. How long before had they sunk a tow of coal?

A. I suppose 90 days, perhaps.

Q. Where were the notes that were maturing?

A. I don't know.

Q. Who had the notes been given to?

A. The parties that loaded the coal.

Q. Who were they?

A. I don't know.

Q. Where had the notes been discounted?

A. I don't know that. I only know what I done and why I done it.

Q. After the money was paid by Fable to Dippold and the deed delivered, when did you next hear about the deed at all?

A. That was when I got the deeds after returning up from the jetties; the next time I heard about them.

Q. Never heard of them at all till that?

A. I don't think I did.

Q. At the time the deeds were delivered was there any other paper signed between Fable and Dippold?

A. Yes; there was. When these deeds were made and the transaction concluded, there was a quibble between them. Dippold claimed the privilege of repurchasing the property within two years.

Q. Upon what terms?

A. By paying him back the money that he gave him with interest on it.

180 Q. Was there any paper to that effect?

A. I think there was, sir. That was made the day the deeds were delivered.

Q. Who wrote that?

A. I am not certain whether I wrote it or whether Fable wrote it.

Q. Was it part of the same transaction—done at the same time?

A. Yes; at the same transaction.

Q. Give us, as near as you can, what that paper was.

A. Well, it was an agreement that Fable was to resell the property

to Dippold upon repayment of his money and interest within two years.

Q. Do you know what became of that paper?

A. I never seen it afterwards. I forgot it until the thing came up from some circumstances that led me to believe that maybe Dippold had repaid Fable out of Dippold & McDonald's money, and that was the reason I put him on the stand—to see about that.

Q. Was that paper signed by Fable?

A. Yes; I think so.

Q. Was it signed by Dippold?

A. I don't think it would be signed by Dippold. I think Dippold took the paper.

Q. You think, then, it was a paper signed by Fable?

A. Just a mere slip. I think Fable agreed to reconvey him the property when he would pay him back the money and the interest on it—within two years; something like that.

Q. Anything said at the time with reference to recording these deeds?

A. I don't remember. I don't think there was.

Q. Did Fable say anything at the time about recording them?

A. I don't think he did.

Q. Did John Dippold?

A. I don't think he did. I will tell you: The same day that he sold that property I purchased a piece of property, and I was somewhat engrossed in my own transactions.

Q. What piece did you purchase that day?

(Witness produces deed and hands it to Mr. Watson.)

A. This is the deed for it, dated Jan. 24, 1876, acknowledged Jan. 26, 1876, recorded in Pittsburgh Jan. 31, 1876, in Deed Book, Vol. 350, page 111. I know that my deed was straight, and I had no reason to believe the others were anything else, and have not up to this day. Dippold and McDonald's matters turned out so badly that I thought maybe he might have repaid Fable for this, and I wanted to find him out, and I put him upon the stand.

181 Q. Did you pay Dippold $18,000 that day?

A. I don't think I did.

Q. How much did you pay him that day?

A. I don't think that enters into the question.

Q. Do you decline to answer that?

A. Yes.

Q. Do you decline to state how you paid him the $18,000?

Objection by Mr. Knox, because witness voluntarily produced this deed to refresh his memory as to a date, and any examination with reference thereto is irrelevant and not proper cross-examination.

Q. Do you decline to state how you paid the $18,000?

A. It is nearly answered now. The money was not paid down there at all. That money was got from the Fifth National Bank. A mortgage was given, and Mr. Arthurs and Mr. Gilmore raised the money and paid him, and it was all paid.

Q. Do you intend to explain the payment of the $18,000 that way, or do you decline to answer the question?

A. I don't think there was any of that money paid him down there—in fact I know there was not.

Q. Was this deed delivered to you down there at the time?

A. That may have been done before. It was acknowledged on the same day with the Fable deeds, and that may have been closed up before Fable got there. I guess Mr. Clarke could furnish the date of that. I think it would show that he received that money.

Q. Can you tell the date?

A. I cannot.

Q. Is there anything by which you can tell the date you went down to Louisville to see Fable?

A. Nothing, except that it was before those deeds.

Q. Was Fable a man of capital—means?

A. Yes, sir.

Q. Do you think him very wealthy?

A. Yes, sir; I do to-day.

Mr. WATSON: I have no more questions.

Redirect examination.

By Mr. KNOX:

Q. You say that after Fable had sent you those deeds to be recorded you held them for some time?

A. Yes, sir.

182 Q. Did Fable instruct you to hold them?

A. No, sir.

Q. Did you write and tell him that you were holding them?

A. No, sir; I took that responsibility.

Q. He knew nothing about your holding them there?

Objected to as leading.

A. He didn't know a thing about it. I hurried them off after holding them, as I have stated.

Q. After you had met Mr. Watson, Mr. Barton, and some other gentlemen, who were trying to put Dippold into bankruptcy, in C. B. M. Smith's office, you became alarmed and went and recorded the deeds. Is that correct?

A. Yes, sir.

Cross-examination.

By Mr. WATSON:

Q. Did Philip Fable send you a letter about recording these deeds?

A. I think so; at the time I got them, I think there was a letter came with the deeds.

Q. Where is that letter?

A. I will swear I don't know.

Q. Did you file your letters?

A. I do now; I didn't then. I was in no particular place long enough to file them.

Adjourned to meet again, by agreement, if plaintiffs wish to introduce further testimony, defendant resting with the foregoing.

Nov. 25, 1884.—No further meetings were held after the one last above mentioned, and the foregoing testimony taken before me as examiner is now filed pursuant to the request of the parties.

W. SCOTT, *Examiner.*

183 *Deposition of Frank W. Smith,*

Produced, sworn, and examined before me this 6th day of April, A. D. 1885, at the office of Frank W. Smith, Esq., No. 93 Diamond St., Pittsburgh, Penna., between the hours of three and five p. m., by virtue of the annexed special agreement.

FLORENCE C. MILLER, [SEAL.]
Notary Public.

FRANK W. SMITH, a witness, being produced on the part of the defendants in pursuance of the foregoing agreement of the parties, deposed as follows, after being duly sworn:

Q. What is your age, residence, and profession?

A. Thirty-three; Pittsburgh; attorney-at-law and notary public.

Q. How long have you been a practicing attorney and how long a notary public?

A. I have been a practicing attorney since the summer of 1877 and a notary public for two years before that.

Defendants' Exhibit "A," being deed of John Dippold and wife to Philip Fable and wife, shown to witness.

Q. State whether or not this deed was acknowledged by John Dippold and wife before you as a notary public.

A. It was.

Q. State when and where it was so acknowledged.

A. It was acknowledged before me at the residence of J. Sharp McDonald, in Sewickley, Allegheny county, Penna., on the 26th day of January, 1876, in the afternoon, by John Dippold and Annie Dippold, his wife, who came up from Baden and met me at McDonald's house pursuant to a previous arrangement. The reason they came to McDonald's was that Baden, the place that they lived, was in Beaver county, and I had doubts as to my authority to take an acknowledgment outside of Allegheny county.

Defendants' Exhibit "B" also shown witness.

Q. State whether or not you also took the acknowledgment of the grantors to that deed.

184 A. I did. I took the acknowledgment of John Dippold and Annie Dippold, his wife, at the residence of J. Sharp McDonald, in Sewickley, Allegheny county, Pa., on the 26th day of January, 1876, the time the acknowledgment bears date.

Cross-examination.

By W. S. PIER, Esq., on the part of the plaintiffs:

Q. How are you enabled to state that you took the acknowledgments to these deeds on the 26th day of January, 1876?

A. Because it is my invariable rule to date any acknowledgment I may execute on the day they are executed, and also because I have a distinct recollection of taking the acknowledgment to these particular papers.

Q. You don't keep any record of your acknowledgments, do you?

A. No, sir.

Q. Who employed you, Mr. Smith, to take these acknowledgments?

A. I am not certain who employed me. Sharp McDonald was a client of the office at that time, and my recollection is that my arrangements were made with him to go to his place, but whether he or Mr. Dippold paid me I don't know.

Q. You say McDonald was a client of the office at that time; who do you mean he was a client of?

A. C. B. M. Smith—my father.

Q. Was this arrangement with you to take these acknowledgments made pursuant to your father's advice?

A. I don't remember.

Q. Did you know John Dippold and his wife at that time?

A. I knew John Dippold, but I believe it was the first time I had ever met his wife.

Q. How long had you known John Dippold at that time?

A. I am unable to say; I don't know.

Q. Had you seen John Dippold often before that time?

A. I had seen him occasionally; I cannot say how often.

Q. Where had you been accustomed to see him?

A. My recollection is that I had seen him in my father's office.

Q. Wasn't he a client of your father's?

A. I think not at that time. The first positive recollection I have of Dippold being a client of the office was when Dippold & Sons went into bankruptcy, which, I think, was after my father died, and my father died in 1877. He was never in the office after February, 1877.

Q. Baden and Sewickley are both on the Fort Wayne railroad, are they not?

A. Yes; they are.

185 Q. Would it not be just as easy for the Dippolds to have come to Pittsburgh as it was for them to go to Sewickley?

A. I don't know.

Q. Did Mr. McDonald, at the time he employed you to go to his house, say why they would meet you there instead of coming to your office?

A. The only reason that was given, as I recollect, was that it would be more convenient for Mrs. Dippold.

Q. She was in good health, wasn't she?

A. I made no inquiries on the subject; my recollection is that she was rather elderly.

Q. Whereabouts in Sewickley did McDonald live?

A. He lived between the railroad and the river, a short distance this side of the Sewickley station.

Q. You say these deeds are in your handwriting?

A. Yes.

Q. Is the consideration in your handwriting, too?

A. Yes.

FRANK W. SMITH.

I hereby certify that the above witness was duly qualified and examined at the time and place stated in the above caption and subscribed his deposition in my presence.

FLORENCE C. MILLER, [SEAL.]
Notary Public.

Filed April 10, 1885.

Deposition of Frank W. Smith,

Produced, sworn, and examined before S. C. McCandless, on Wednesday, June 17th, 1885, at 2 o'clock p. m., at the clerk's — of aforesaid court, in the city of Pittsburgh, in said district, in pursuance of an order of same date and by agreement of the parties in interest.

Present: James H. McCreery, Esq., solicitor for assignees; H. W. Weir, Esq., solicitor for respondents.

FRANK W. SMITH, being duly sworn, was examined by Mr. MCCREERY:

Mr. Smith's testimony is recorded as follows:

186 1 Q. State whether or not you made a deposition in this case on the 6th day of April last.

Deposition handed to the witness.

A. I did.

2 Q. State whether or not at that time papers marked Exhibits "A" and "B" (and now shown to witness) were submitted to you for identification.

A. They were.

3 Q. In that deposition did you state that the Exhibits "A" and "B," as shown you, were written by you?

A. The question was asked me, "You say these deeds are in your handwriting?" to which I replied, "Yes." "Is the consideration in your handwriting, too?" To that one I also replied, "Yes." Since I gave my testimony on April 6, 1885, I have made a further and careful examination of the two deeds, Exhibits "A" and "B," and I find that, although the handwriting in the deeds is very similar to my own, yet I was mistaken in saying that the consideration was in my handwriting, and also in saying that the deeds

were in my handwriting, as the description of the property in the deeds and the names of the parties in the deeds, together with the *habendum* and the warranty clause in Exhibit "A," are not in my handwriting. The acknowledgments and receipts in both deeds—the receipts are in my handwriting. The dates of the acknowledgments are in my handwriting, I know, and, I think, the acknowledgments were filled up by me, but I am not sure of it. The warranty clause in Exhibit "B" was also filled up by me.

4 Q. State whether or not at the time these deeds were submitted to you for identification you examined them prior to making answer, as contained in your deposition.

A. As to handwriting, do you mean?

Q. Yes, sir.

A. I made no especial examination as to the handwriting until Mr. Pier asked me the question as to whether the deeds were in my handwriting, and I recollect particularly noticing the warranty in Exhibit "B," which was in my handwriting, which led me, I suppose, to think the whole deed was in my handwriting.

5 Q. State whether or not you at this time, January, 1876, *you* were writing deeds for J. Sharp McDonald or the Dippolds and whether the deeds marked Exhibits "A" and "B" were the only ones acknowledged by you for John Dippold and wife during the months of January, 1876, or February, 1876.

Objected to as being outside of the order of court allowing this examination, and the witness is instructed not to answer.

187 The solicitor for the plaintiffs requests the commissioner to certify said question to the court for its decision.

6 Q. State whether or not, on the day of the date of the acknowledgments of Exhibits "A" and "B," the same parties acknowledged other deeds of conveyance for the property described in Exhibits "A" and "B," or for any property then owned by Dippold and wife.

Same objection and same request made as to last.

7 Q. State whether or not, in another examination before Register Shafer, in this subject-matter, you stated that you had written the deeds marked Exhibits "A" and "B."

Same objection and request as above.

8 Q. State whether or not, prior to the bankruptcy of Dippold & Sons, you wrote any deed for John Dippold and wife for the property described in Exhibits "A" and "B."

Same objection and request as before made.

The objections to questions numbered 5, 6, 7, and 8, respectively, being submitted to the judge, at chambers, in the presence of counsel for both sides, the court decides that the examination is as extensive as the order of court authorized, and the objections are sustained.

FRANK W. SMITH.

WESTERN DISTRICT OF PENNSYLVANIA, *ss*:

I, S. C. McCandless, do hereby certify that the foregoing is the testimony taken in pursuance of said order of court, and reduced to writing and signed in my presence.

Witness my hand, at the city of Pittsburgh, in said district, this 17th day of June, 1885. S. C. McCANDLESS.

Filed June 17, 1885.

188 EXHIBIT No. 1. Filed with Deposition of Henry Hunter May 9, 1880, and Referred to Therein. H. D. Dougherty, Examiner.

DR. Mr. F. Fabel in account with The Western Bank. CR.

1875.			1875.		
June 15.	To check	73	June 1.	By balance	$114 65
July 16.	"	122 24	July 15.	" cash	108 50
28.	"	50	" 20.	" "	377
30.	"	178 85	Aug. 13.	" "	704 95
31.	"	119 79	19.	" "	117 55
			1876.		
"	"	16 70	Jan'y 6.	" "	205
Aug. 17.	"	440 80	"	" "	374
"		150		Proceeds of disc.	2,929 55
23.		101 65	Mar. 24.	" "	745 30
28.		100	31.	Proceeds of disc.	597 30
Nov. 12.		65 43	Ap'l 7.	Proceeds of disc.	2,947
1876.					
Jan. 8.		3,283 82	" 8.	By cash	500
11.		47 35	" 10.	" "	805 48
17.		52 20	June 9.	" proceeds of disc.	984
19.		45 28	Aug. 8.	" cash	307 32
19.		42 45	Aug. 9.	" "	629 03
Feb'y 8.		63 70	Aug. 10.	" "	148 95
189					
Mar. 25.	To check	44 40	Aug. 28.	By cash	1,676 89
27.		336 30			
28.		123 47			
Ap'l 1.		351 45			
3.		113 80			
4.		149 25			
6.		99 98			
7.		3,052 85			
10.		141 60			
14.		116 00			
15.		215			
		53 35			
21.		203 05			
22.		20 05			
25.		257 44			
26.		211 20			
29.		57 53			
June 9.		1,000 00			
Aug. 11.		1,000 00			
	To balance	1,772 47			
		14,272 47			14,272 47
			1876.		
			Sept. 1.	By balance	1,772 29

190 EXHIBIT No. 1. Filed with Deposition of Jacob Kriegle, Sr., May 7, 1880, and Referred to Therein. H. D. Dougherty, Examiner.

Masonic Savings Bank in acc't with F. Fabel. CR.

				1885.			
July	1.	Checks	1,383 25	July	1.	Balance	1,300 66
	2.	"	154 33		1.	Cash deposit	358 04
	3.	"	632 59		2.	" "	246 38
	7.	"	294 65		3.	" "	747 70
	8.	"	243 39		7.	" "	51 00
					8.	" "	580 00
	9.	"	273 24		18.	" "	41 75
	10.	"	170 00		12.	" "	30 90
	12.	"	138 03		13.	" "	82 50
	13.	"	45 00		14.		450 15
	16.	"	29 20		14.	Collection	24 65
	17.	"	150 00		19.	Cash	856 65
	24.	"	315 00		20.	"	47 77
	31.	"	191 70		24.		276 66
		Balance	1,074 33				
			5,094 71				5,094 71
Aug.	2.	Checks	3,000 00	Aug.	1.	Balance	1,074 33
	3.	"	107 95		2.	Cash	218 70
	6.	"	172 44		3.	Discount	1,968 00
	7.	"	100 00		4.	Cash	251 35
	9.	"	453 53		6.	"	30 75
	10.	"	114 83		7.	"	514 60
	14.	"	150 00		9.	"	51 15
191							
Aug.	18.	Checks	40 00	Aug.	10.	Cash	632 20
	20.	"	50 00		11.		155 00
	21.	"	596 94		16.		525 28
	25.	"	100 00		21.		200 00
	30.	"	80 00		21.	Discount	145 05
		Balance	853 22		31.	Cash	52 50
			5,818 91				5,818 91
Sept.	1.	Checks	1,175 70	Sept.	1.	Balance	853 22
	4.	"	200 00		1.	Cash	724 85
	10.	"	90 00		3.	"	316 22
	11.	"	136 45		4.	"	166 25
	13.	"	74 70		6	"	94 75
	"	"	514 53		7.	"	305 74
	14.	"	67 00		9.	Collection	40 06
	15.	"	286 00		10.	Cash	338 90
	17.	"	211 00		11.	"	63 00
	18.	"	467 98		16.	"	316 90
	21.	"	440 00		22.	"	641 77
	25.	"	402 40		23.	"	879. 00
	27.	"	230 15		28.	"	610 70
		Balance	1,055 05				
			5,351 36				5,351 36
Oct.	1.	Checks	1,500 00	Oct.	1.	Balance	1,055 45
	1.	"	75 00		2.	Collections	164 67
	2.		200 00		2.	Cash	133 68

Exhibit No. 1—Continued.

				1885.			
Oct.	4.	----------	2,269 70	Oct.	4.	Cash ----------	409 02
	5.	----------	898 55		5.	" ----------	315 00
	6.	----------	220 49		5.	Discounts ----------	2,959 50
	7.	----------	100 00		7.	Cash ----------	835 87
192							
Oct.	8.	Checks ----------	168 83	Oct.	9.	Cash ----------	600 00
	9.	" ----------	823 06		11.	" ----------	624 73
	11.	" ----------	121 95		13.	" ----------	620 00
	13.	" ----------	159 15		14.	----------	1,000 00
	15.	" ----------	75 00		15.	----------	160 00
	16.	" ----------	496 22		16.	----------	190 00
	18.	" ----------	500 00		18.	Collection ----------	348 00
	21.	" ----------	143 77		"	" ----------	157 50
	22.	" ----------	188 45		"	Cash ----------	315 00
	23.	" ----------	316 15		"	Discount ----------	611 00
	26.	" ----------	230 70		19.	Cash ----------	312 00
	28.	" ----------	92 33		20.	" ----------	978 89
	29.	" ----------	150 00		21.	" ----------	157 50
	30.	" ----------	150 00		"	" ----------	113 30
		Balance ----------	5,097 93		22.	" ----------	615 44
					25.	" ----------	156 80
					26.	----------	23 80
					28.	----------	308 95
					29.	Collection ----------	316 38
					"	Cash ----------	426 80
					30.	" ----------	67 50
			13,977 28				13,977 28
Nov.	1.	Checks ----------	1,500 00	Nov.	1.	Balance ----------	5,097 93
	3.	" ----------	500 00		"	Collections ----------	154 85
	4.	" ----------	116 32		2.	Cash ----------	88 10
	5.	" ----------	1,610 13		4.	Collections ----------	620 40
	6.	" ----------	1,041 43		4.	Cash ----------	337 08
	11.	" ----------	333 18		5.	" ----------	375 60
	12.	" ----------	526 59		9.	" ----------	36 09
	13.	" ----------	464 07		11.	" ----------	20 00
193							
Nov.	15.	Checks ----------	201 93	Nov.	13.	Cash ----------	329 20
	16.	" ----------	825 09		15.	" ----------	438 20
	19.	" ----------	125 00		16.	" ----------	406 02
	20.	" ----------	240 00		18.	" ----------	217 40
	22.	" ----------	314 63		19.	" ----------	87 50
	26.	" ----------	249 25		20.	Collections ----------	155 60
	27.	" ----------	250 00		22.	" ----------	312 20
	30.	" ----------	212 59		24.	" ----------	203 49
		Balance ----------	2,183 60		26.	" ----------	48 50
					"	" ----------	154 70
					27.	" ----------	87 50
					29.	" ----------	156 35
					"	Cash ----------	926 00
					30.	" ----------	441 10
			10,693 81				10,693 81
Dec.	1.	Checks ----------	1,500 00	Dec.	1.	Balance ----------	2,183 60
	2.	" ----------	430 49		"	Cash ----------	684 62
	3.	" ----------	223 78		2.	" ----------	363 00
	4.	" ----------	482 29		3.	" ----------	109 37

Exhibit No. 1—Continued.

				1885.			
Dec.	6.	Checks	2,357 25	Dec.	4.	Cash	681 85
	7.	"	136 90		6.	"	645 40
	8.	"	680 39		"	Collections	155 35
	9.	"	508 87		"	"	157 25
	10.	"	585 14		"	Cash	300 00
	11.	"	1,053 36		6.	Discount	1,968 00
	13.	"	100 00		8.	Cash	377 46
	14.	"	275 60		10.	Collections	158 60
	15.	"	204 95		"	Cash	696 70
	16.	"	266 68		14.	"	70 30
	17.	"	329 35		"	"	186 56
194							
Dec.	18.	Check	598 16	Dec.	15.	Collections	610 40
	20.	"	664 30		16.	"	67 00
	21.	"	40 00		16.	"	395 70
	22.	"	85 50		"	Discount	108 55
	23.	"	817 14		18.	Cash	88 85
	24.	"	785 34		20.	Collection	175 85
	27.	"	44 35		"	Cash	810 00
	28.	"	617 00		21.	"	426 60
	29.	"	415 70		22.	"	520 20
	30.	"	611 32		23.	"	101 00
	31.	"	225 00		27.	Collection	141 72
		Balance	1,277 31		"	"	640 40
					"	Cash	440 58
					28.	"	279 64
					29.	"	347 00
					30.	"	1,268 22
					31.	"	156 40
			15,316 17				15,316 17
				1876.			
1876.							
Jan'y	3.	Checks	1,955 75	Jan'y	1.	Balance	1,277 31
	4.	"	166 61		3.	Cash	1,399 04
	5.	"	1,086 75		"	"	590 27
	6.	"	388 34		4.	"	199 32
	7.	"	295 33		5.	Collection	620 00
	8.	"	648 24		"	Cash	33 84
	11.	"	163 93		6.	"	100 00
	12.	"	147 40		7.	"	126 00
	15.	"	279 99		8.	"	110 10
	18.	"	90 10		10.	"	244 19
	19.	"	384 70		11.	"	168 59
195							
Jan'y	21.	Checks	172 50	Jan'y	12.	Cash	185 23
	22.	"	578 40		15.	Discounts	604 95
	24.	"	376 20		17.	Cash	671 32
	25.		166 78		18.	"	1,210 31
	"		63 15		21.	Collections	99 75
	26.		531 30		22.	Cash	484 61
	27.		255 40		24.	Collections	25 40
	28.		143 70		25.	Discount	924 40
	29.		225 00		31.	Cash	420 00
		Balance	1,375 02				
			9,494 63				9,494 63
Feb'y	1.	Checks	1,500 00	Feb'y	1.	Balance	1,375 02
	5.		457 20		"	Cash	143 60

Exhibit No. 1—Continued.

1876.				1876.		
Feb'y 7.		2,567 35		Feb'y 2.	Cash	372 59
8.		559 58		3.	"	433 10
9.		50 00		8.	"	613 80
10.		213 61		9.	"	624 00
12.		361 34		7.	Discount	1,975 50
14.		395 18		10.	Cash	147 00
16.		63 45		11.	"	185 43
17.		589 16		12.	Collection	155 61
19.		777 05		12.	Cash	155 10
24.		139 25		12.	"	153 30
26.		175 00		14.	"	161 68
28.		119 40		15.	"	585 43
	Balance	1,434 46		14.	Discount	344 30
				16.	Cash	550 43
				17.	"	268 19
				23.	"	179 50
				24.	"	125 20
196						
				Feb. 26.	Cash	284 30
				28.	Collection	156 70
				29.	Cash	412 25
		9,402 03				9,402 03
March 1.	Checks	1,400 00		March 1.	Balance	1,434 46
4.	"	578 58		3.	Cash	233 95
6.	"	556 33		"	"	1,077 18
7.	"	280 65		6.	"	1,233 04
8.	"	451 57		7.	"	74 50
9.	"	20 29		8.	"	157 80
11.	"	471 10		9.	Collections	80 75
15.	"	437 30		9.	Cash	112 25
18.	"	880 88		11.	"	1,172 12
21.	"	418 95		13.	"	625 96
22.	"	40 00		14.	"	367 43
22.	"	282 35		15.	"	665 00
23.	"	311 54		16.	"	526 55
25.	"	2,250 00		18.	"	677 50
27.	"	87 19		21.	Collections	153 00
28.	"	214 37		24.	Cash	990 83
31.	"	90 60		25.	"	987 35
	Balance	2,343 17		27.	"	153 75
				28.	Collections	179 70
				28.	Cash	123 00
				30.		88 75
		11,114 87				11,114 87
April 1.	Checks	2,000 00		April 1.	Balance	2,343 17
3.	"	550 40		"	Cash	122 68
4.	"	196 20		4.	"	408 55
197						
April 4.	Checks	79 90		April 6.	Cash	1,078 58
5.	"	160 80		7.	"	291 00
6.	"	39 80		8.	"	123 00
7.	"	492 55		10.	"	746 70
8.	"	647 88		14.	"	751 60
10.	"	80 15		15.	"	216 55
11.	"	95 00		17.	"	150 00

Exhibit No. 1—Continued.

1876.			1876.		
April 12.	Checks	35 25	April 19.	Cash	239 70
14.	"	181 70	20.	"	1,182 53
15.	"	677 38	21.	"	150 00
17.	"	271 55	22.	"	231 00
19.	"	111 05	25.	"	340 53
20.	"	74 35	27.	"	398 00
22.	"	918 28	27.	"	45 62
26.	"	137 10			
27.	"	666 00			
29.	"	200 00			
	Balance	1,203 87			
		8,819 21			8,819 21
May 1.	Checks	1,500 00	May 1.	Balance	1,203 87
3.	"	228 44	2.	"	390 12
4.	"	65 85	3.	"	297 00
5.	"	334 55	5.	Collection	53 60
6.	"	95 00	"	Cash	661 54
"	"	453 81	6.	"	381 42
8.	"	207 30	4.	Discount	670 71
9.	"	412 99	8.	Collection	36 95
10.	"	243 20	9.	"	592 82
11.	"	62 99	"	Cash	147 00
12.	"	149 50	11.	"	112 00
198					
May 13.	Checks	865 20	May 12.	Cash	150 00
"	"	93 95	13.	"	1,678 82
15.	"	68 90	15.	Collections	100 00
16.	"	338 29	20.	Cash	189 50
17.	"	264 72	25.	"	283 50
18.	"	161 45	26.	"	270 69
20.	"	546 65	30.	"	371 30
22.	"	298 79	31.	"	204 60
23.	"	691 90	31.	Discount	98 00
26.	"	27 33			
27.	"	110 00			
30.	"	90 84			
31.	"	319 47			
	Balance	262 32			
		7,893 44			7,893 44
June 1.	Check	1,500 00	June 1.	Balance	262 32
3.	"	976 83	"	Cash	71 95
7.	"	164 40	2.	"	161 25
9.	"	2,000 00	3.	Collections	149 60
10.	"	430 29	"	Discount	4,842 50
13.	"	307 65	5.	Cash	75 00
15.	"	75 00	7.	Collections	149 55
16.	"	67 50	9.	Cash	300 00
21.	"	1,055 87	10.	"	708 90
22.	"	362 29	13.	Collections	296 40
23.	"	476 74	14.	Cash	767 02
24.	"	75 00	17.	"	182 32
26.	"	40 00	19.	Collections	17 75
27.	"	82 55	19.	Cash	564 01
29.	"	840 88	21.	"	115 50

Exhibit No. 1—Continued.

199					
1876.			1876.		
June 30.	Check	79 55	June 26.	Cash	80 80
	Balance	1,084 37	29.	"	300 00
			"	Discount	524 05
		9,568 92			9,568 92
			1886.		
			July 1.	Balance	1,034 37

200 EXHIBIT No. 2. Filed with Deposition of Jacob Kriegle, Sr., May 7, 1880, and Referred to Therein. H. D. Dougherty, Examiner.

1875.

Aug.	2.	Note (1)	2,000 00
	21.	J. H. Pearce	146 30
Oct.	4.	Note (2)	1,000 00
	4.	Ph. Fabel (2)	2,000 00
	18.	Johnston, Neuman & Co.	616 04
Dec.	6.	Note (3)	2,000 00
	16.	Note Brauger	109 90
	30.	Chess, Carlong & Co.	1,291 80
	30.	Note to Dippold & Son	1,000 00

1876.

Jan'y	15.	N. Boes	223 00
	5.	Heffennan	386 75
	25.	A. Engelhard	920 00
Feb'y	7.	Note stock collateral	2,000 00
"	14.	Wheatolh	347 26
May	4.	F. W. Myer	680 35
June	1.	Note secured by German insurance stock	5,000 00
	29.	Garnet & Bro.	145 00
	29.	F. W. Myer	386 75

Nothing till Oct., '76.

201 In the District Court of the United States for the Western District of Pennsylvania.

JOHN F. DRAVO and ROBERT ARTHURS, Assignees of John Dippold & Sons,
vs.
PHILIP FABEL and KATE FABEL, His Wife; JOHN DIPPOLD and NANNIE DIPPOLD, His Wife.

No. 4. October Term, 1879.
(Assignee's Docket.)
In Equity.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

Seal of the Clerk U. S. Dist. Court, W. D. of Pa.

I, S. C. McCandless, clerk of the district court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true and correct copy of the record and proceedings in the above-entitled case, so full and entire as the same remains of record and on file in my office, except that part of the testimony taken by Wm. Scott, Esq., examiner, at Louisville, filed Oct. 22, 1879, last, and reproduced from examiner's short-hand notes and filed April 10, 1885 (pages 1 to 53 of appendix, inclusive), which reproduced copy was taken from the files by leave of court for the use of the printer and has not been returned.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this 30th day of November, A. D. 1885.

S. C. McCANDLESS, *Clerk.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

202 I, Marcus W. Acheson, district judge of the United States for said district, do hereby certify that S. C. McCandless was at the time of making the foregoing certificate *was* clerk of the said court, and that the said certificate made by him is in due form of law.

Pittsburgh, Dec., 1885.

M. W. ACHESON,
U. S. District Judge.

(Indorsed as follows:)

No. 11. May term, 1886. John F. Dravo and Rob't Arthurs, assignees of John Dippold & Sons, *vs.* John Dippold and wife and Phillip Fabel and wife. Record from U. S. dist. court. Filed Dec'r 1, 1885. H. D. Gamble, cl'k. J. H. McCreery.

203 *Decree.*

In the Circuit Court of the United States for the Western District of Pennsylvania.

Appeal from U. S. District Court.

JOHN F. DRAVO and ROBERT ARTHURS, Assignees in Bankruptcy of John Dippold & Sons,
vs.
PHILIP FABEL and Wife and JOHN DIPPOLD and Wife.
} No. 11. May Term, 1886.

And now, to wit, July 27, 1886, this cause having come on to be heard upon final hearing, on May 24, 1886, and having been argued by counsel, and the court being fully advised in the premises, it is ordered, adjudged, and decreed that the bill herein be dismissed at the costs of the appellants.

BY THE COURT.

Indorsed: No. 11. May term, 1886. Circuit court of the United States, western district of Pennsylvania. Dravo & Arthurs, assignees, *vs.* Dippold & wife and Fabel & wife. Decree. Filed July 27, 1886. H. D. Gamble, clerk.

204 *Bond on Appeal.*

Know all men by these presents that we, John F. Dravo and Robert Arthurs, assignees in bankruptcy of John Dippold, and —— ——, of the county of Allegheny, in the State of Pennsylvania, are held and firmly bound unto —— ——, clerk of the Supreme Court of the United States, for the use of the appellees in an appeal to the said Supreme Court from a decree of the circuit court of the United States for the western district of Pennsylvania, at No. 11, of May term, 1886, in the full and just sum of one thousand dollars, current money of the United States of America, to be paid to the said clerk or his successors; to which payment, well and truly to be made, we do bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of July, A. D. 1886.

Whereas lately, at the circuit court of the United States for the western district of Pennsylvania, in a suit depending in said court between said John F. Dravo and Roberts, assignees in bankruptcy of John Dippold, and Philip Fabel and Kate Fabel, his wife, and John Dippold and Nannie Dippold, his wife, a decree and judgment was rendered against the said assignees in bankruptcy, and
205 the said assignees having obtained an appeal to remove the said cause to the Supreme Court of the United States:

Now the condition of this obligation is such that if the said

obligors shall well and truly pay or cause to be paid to the said clerk and his successors, for the use of said appellees, their heirs, executors, administrators, or assignes, all damages that shall accrue to them in the prosecution of the said appeal, then this obligation to be void; otherwise to remain in full force and virtue.

JOHN F. DRAVO, *Assignee.*
ROB'T ARTHURS, *Assignee.*
JOHN F. DRAVO. [SEAL.]
ROB'T ARTHURS. [SEAL.]

Sept. 23, 1886, this bond approved.

M. W. ACHESON,
U. S. Judge.

Indorsed: No. 11. May term, 1886. Assignees in Bankruptcy of John Dippold *vs.* Philip Fabel *et al.* Appellants' bond. Filed Sept. 25, 1886. H. D. Gamble, clerk.

206 *Appeal.*

In the United States Circuit Court, Western District of Pa.

ROBERT ARTHURS and JOHN F. DRAVO, Assignees in Bankruptcy of John Dippold, Appellants,
vs.
PHILIP FABEL and KATE FABEL, His Wife; JOHN DIPPOLD and NANNIE DIPPOLD, His Wife, Appellees.
No. 11. May Term, 1886.

To the honorable the Supreme Court of the United States:

The appeal of John Dravo and Robert Arthurs, assignees in bankruptcy of John Dippold, the above-named appellants, respectively showeth—

First. That the subject-matter of controversy is the right of possession to certain tracts of land, situate in Beaver county, Pa., of the value of $30,000.

Second. That on the 13th day of June, 1879, the said appellants filed their bill of complaint in the district court of the United States for the western district of Pennsylvania, in equity, at No. 4, October term, 1879, against the above-named appellees, alleging that two certain deeds of conveyance made by the said John Dippold and wife to the said Philip Fabel and Kate Fabel, his
207 wife, were fraudulent and void as to the creditors of said John Dippold, and praying that the said deed might be decreed to be fraudulent and void, and that the same might be decreed to be delivered up to be cancelled; that the said cause was so proceeded in that on August 28th, 1885, the said district court of the United States made a final decree and order in the said cause, and decreed that the said bill be dismissed and the costs be paid by complainants out of the bankruptcy estate in their hands; that evi-

dence of said complainants and appellants, to wit, on September 29th, 1885, appealed to the circuit court of the United States for the western district of Pennsylvania from said decree of the said district court of the United States, and on the same day the appeal was allowed; that said appeal was so proceeded in that on the 26th day of May, 1886, the said circuit court of the United States, after argument and consideration thereof, affirmed the decree of the district court. Whereupon, on the 27th of July, 1886, it was ordered, adjudged, and decreed that the said bill be dismissed at the cost of appellant-. Wherefore these appellants appealed from the whole of said decree of the said circuit court of the United States, and prayed that the decree of the said circuit court, and the pleadings, depositions, evi-

208 dence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said the Supreme Court of the United States will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reviewed and reversed and a decree made that the said deeds of conveyance are fraudulent and void, and that they be delivered up to be cancelled, with such other decree as to the said the Supreme Court of the United States may seem just.

J. F. DRAVO &
ROBERT ARTHURS,
Assignees of Jno. Dippold,
Per J. H. McCREERY,
Their Att'y.

D. T. WATSON,
J. H. McCREERY,
W. S. PIER,
Sol'rs for Pl'ffs & Appellants.

Sept. 25th, 1886, appeal allowed.

M. W. ACHESON,
U. S. Judge.

Indorsed: Rob't Arthurs and Jno. F. Dravo, assignees, *vs.* Philip Fabel *et al.* Filed Sept. 25, 1886. H. D. Gamble, clerk.

209 UNITED STATES OF AMERICA, } *sct:*
Western District of Pennsylvania, }

To Phillip Fabel and Kate Fabel, his wife; John Dippold and Nannie Dippold, his wife, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the 2d Monday of October next, pursuant to an appeal filed in the clerk's office of the United States circuit court, wherein John F. Dravo and Robert Arthurs, assignees of John Dippold and Sons, are appellants and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 25th day of September, A. D. 1886.
[Seal of the U. S. Circuit Court, W. D. Penna.]

M. W. ACHESON,
Judge of U. S. Circuit Court.

Attest: H. D. GAMBLE, *Clerk.*

210 [Endorsed:] No. —. — term, 18—. —— —— *vs.* —— ——. Citation. Oct. 4th, 1886. Service accepted. H. W. Weir, att'y for D. in E. Knox & Reed, att'ys for def't in error. Filed Sept. 15, 1886.

211 In the Circuit Court of the United States for the Western District of Pennsylvania.

JOHN F. DRAVO and ROBERT ARTHURS, Assignees in Bankruptcy of John Dippold & Sons,
vs.
PHILIP FABEL & Wife and JOHN DIPPOLD & Wife.
} No. 11. May Term, 1886.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, H. D. Gamble, clerk of the circuit court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true copy of the record and proceedings in the above-entitled case, so full and entire as the same remains of record and on file in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this 4th day of October, A. D. 1886.

[Seal of the U. S. Circuit Court, W. D. Penna.]

H. D. GAMBLE, *Clerk.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, M. W. Acheson, judge of the United States circuit court for said district, do hereby certify that H. D. Gamble above named was at the time of making the above certificate and is now clerk of the said court, and that the said certificate made by him is in due form of law.

M. W. ACHESON,
U. S. Judge.

Pittsburgh, October 4th, 1886.

Endorsed on cover: W. Pennsylvania C. C. U. S. No. 416. John F. Dravo and Robert Arthurs, assignees of John Dippold & Sons, appellants, *vs.* Philip Fabel and Kate Fabel, his wife, and John Dippold and Fannie Dippold, his wife. Filed October 11, 1886.

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CLERK

IN THE

Supreme Court of the United States.

No. 142, OCTOBER TERM, 1889.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

JOHN F. DRAVO and ROBERT ARTHURS, Assignees of John Dippold & Sons, Appellants,

VERSUS

PHILIP FABEL and KATE FABEL, his wife; and JOHN DIPPOLD and NANNIE DIPPOLD, his wife, Appellees.

APPELLANTS' BRIEF.

D. T. WATSON,
WILLIAM S. PIER,
Counsel for Appellants.

PITTSBURGH:
EDWARD F. ANDERSON, BOOK AND JOB PRINTER, 99 FIFTH AVENUE.
1889.

IN THE

Supreme Court of the United States.

No. *Term.*

JOHN F. DRAVO AND ROBERT ARTHURS, ASSIGNEES OF JOHN DIPPOLD & SONS, APPELLANTS.

VERSUS

PHILIP FABEL AND KATE FABEL, HIS WIFE; and JOHN DIPPOLD AND NANNIE DIPPOLD, HIS WIFE.

APPELLANTS' BRIEF.

STATEMENT OF THE CASE.

This appeal is on a bill for the cancellation of two deeds, alleged to be fraudulent.

The nature of the inquiry here renders necessary a full statement of the facts.

John Dippold was adjudicated a bankrupt (page 143 of the printed record) in February, 1878, and John F. Dravo and Robert Arthurs, who are the appellants here, were duly elected his assignees. The bankrupt had been largely engaged in the mining and merchandizing of coal, having steamboats and coal barges, by which he transported his coal from the mines, near Pittsburgh, to the markets at Louisville and below. When the assignees came to collect the assets they found, among other property lately owned by the bankrupt, but then claimed by his relatives, a valuable farm, situated in Beaver county, Pennsylvania. It comprised 248 acres, and was in the possession of the bankrupt, who was living upon it then and since, just as he had since 1861, when he bought it; but the title to it was claimed by Philip Fabel and Kate Fabel, the latter being the daughter of the bankrupt, and the former her husband. The deeds, two in number, under which they claimed, although they bore date January, 1876, and were certified to have been acknowl-

edged then, were not recorded until February, 1878, a few days before the petition in bankruptcy was filed (143). At the time the deeds were made Dippold was largely indebted, and continued so down to the bankruptcy (130).

Philip Fabel married Kate Dippold, daughter of the bankrupt, in 1874 (58). He resided in Louisville, Kentucky, and was a clerk for his father, a chandler in that city. After his marriage his financial resources consisted of a salary of twelve hundred dollars a year. Before that event he was without a fixed salary, but received for his services whatever he needed he said (58). Mrs. Kate Fabel had no separate estate.

The assignees filed their bill in June, 1879, in the District Court of the United States for the Western District of Pennsylvania. In it they set out the bankruptcy, their appointment as assignees, the recent ownership of the land by the bankrupt, averred that he had obtained credit thereon to borrow money, that deeds conveying the land to Fabel and his wife jointly were recorded February 16, 1878, the petition in bankruptcy having been filed February 28, 1878; showed that Fabel's wife was the bankrupt's daughter; that neither of the grantees had means to purchase the land (the deeds purported to be made for $28,000 consideration money); charged conspiracy between the respondents and that the deeds were fraudulent, and had been collusively made and delivered for the purpose of hindering, delaying and preventing creditors; and prayed that said deeds might be decreed null, etc.

John Dippold and wife answered jointly (p. 8), and Philip Fabel put in an answer, which purported to be the joint answer of himself and wife, but which was only executed by himself (9). The answers of the Dippolds and of Fabel are almost literally the same, and at the time they were filed the same counsel appeared for all the respondents. Later, the Fabels were represented by counsel who appeared for them only. By their answer respondents admitted the bankruptcy, the assigneeship, bankrupt's recent ownership of the land; that deeds were made and recorded; that Fabel's wife was Dippold's daughter—all as alleged in the bill; and denied the other averments thereof. Respondents, Dippold and wife, averred "that they sold and conveyed the properties to the said Philip Fabel and Kate Fabel, his wife," and that the "considerations *were paid by the parties*" (6 paragraph, p. 8); and Philip Fabel said in

his answer that "they," meaning himself and wife, "paid a fair and reasonable price" for the land. These averments of the answers are noticeable, because they are inconsistent with the testimony of the parties who made them, when cross-examined; their story then being that the consideration money had been actually supplied by the father of Philip Fabel, the latter having no means of his own, and that Kate Fabel had not the remotest connection with the alleged purchase money, and no interest therein. It will be noticed, however, that the said averments of the answers are consistent with the tenor of the deeds themselves, they being made to Philip Fabel and Kate Fabel, his wife, in consideration of the sum of $28,000, while the said testimony is not.

The allegations of the bill essential to a recovery having been denied, replication was filed, and testimony was taken before an Examiner.

Collusion and conspiracy, or the facts which establish them, are not usually known to others than the parties thereto. Therefore, complainants called the respondents, Philip Fabel and John Dippold, into the witness stand and examined them.

Fabel testified that his father died in July, 1878, intestate, that no administrator had qualified, that there had been no settlement of his estate (29, 30), which was of the value of about $100,000 (61), that the children all being of age had proceeded with his business. Witness had been bookkeeper for his father and was so at his death. His father's books showed accounts against those indebted to him, *but they showed no debit against the witness, Philip Fabel* (28, 30).

On another occasion this witness testified in the bankruptcy proceedings of John Dippold & Sons, and he then gave in evidence that the purchase money of this farm had been charged up against him by his father (63). This appears on the page cited.

Proceeding, the witness said that the $28,000 of purchase money was paid to the grantor, as follows: $10,000, which had been loaned to Dippold in 1875, was satisfied; $10,000 cash was paid, and four promissory notes amounting to $8,000 were given and soon discounted and retired (32). The loans were made at different times in 1875 in sums of $500, $1,000 and $1,500, until they aggregated $10,000. The witness got all this money from his father who gave it to him, not by check, but in currency (50, 51). No

entry was made of any of these sums in the cash book, or in the day book, or the journal, or the ledger, or the check book, although his father kept all such books for the purpose of showing his financial operations and condition. No checks and no account in any bank would show these transactions. The money loaned bankrupt was his father's money, and was paid to him in cash (30, 31). Witness took the money out of his father's safe or money drawer and put a memorandum in its place to be counted as cash (31). These memoranda would be lifted by his father within 24 hours after (31). The memoranda witness tore up or burned up (51). On page 31 of the printed record he testified that all of this $10,000 of loans was in currency; on page 32, that he drew some of it from bank on his father's check, no record of which appeared in his father's books of account; and on page 51, he testified that his father did not give him checks for any portion of the money loaned, but that it was all in currency.

The second $10,000 was paid to the bankrupt by witness in six thousand dollar bills and the rest in $500 bills, which witness employed a broker at the exchange to procure for him. The broker's name, he said, was J. William Anderson. Did not know where the broker resided; he left and went to Europe very soon after; left Louisville a week or ten days before witness went to Pittsburgh to pay over the money for the deeds. Did not know where the broker had his office; met him on the street; he was a stock and bond broker witness always thought; could not say whether his hair was black or red, whether he was fat or slender; thought he was a street broker; never knew with what other brokers he associated. Never heard of him since he went to Europe (33). This broker brought the large bills to witness at his father's office to exchange them for small bills (34).

Under the service of a *subpœna duces tecum* complainant's counsel requested the witness to produce the account books of his father, but he had not brought them before the Examiner. His counsel, however, promised that they should be produced after the recess, and an adjournment was taken to enable the witness to bring them (34). Instead of the production of the books a member of the Louisville bar appeared after recess and stated that he represented the mother and brothers of witness, and that they declined to permit witness to take said books from their custody. Complainant's

counsel then asked the attorney to be sworn, and proposed to prove by him that he had been employed by Philip Fabel alone, and that he had had no interview with any other person interested in his father's estate. Fabel's counsel objected to this offer, and the attorney declined to be sworn on the ground of confidential communication (50). But Fabel being recalled admitted that he was the only member of his family who had procured the attorney to object to the production of the books (61). Thereupon a petition was presented by complainants to the Circuit Court of the United States, sitting at Louisville, to compel the production of the books by witness, and an order was duly made requiring him to produce them (64, 65).

The books were obtained in the manner described. They showed that at the time when, according to Fable's testimony, he had been in or near Pittsburgh receiving the deeds and paying the purchase money, 500 miles away from home, he had daily made entries upon them of the business of his father at Louisville. The day book upon which the daily routine of business was recorded, the cash book showing each receipt of cash as it came in, and each expenditure as it was paid out, both showed that every item entered in them on the 22, 24, 25, 26, 27, 28, 29, 31 days of January, 1876, was admittedly in Philip Fabel's handwriting (65, 66.) Yet it will be seen on page 55 of the printed record that he had previously testified that he paid over the purchase money to the grantor at Sewickley, near Pittsburgh, on the 26th of January, that he had left Louisville on the 23rd January to go there, and that he was away from Louisville probably a week or ten days. That was the time when he, Fabel, and the bankrupt and the bankrupt's other son-in-law all said the money was paid over. But the written evidence produced by respondent only when the order of court compelled him, and made at a time when there was no inducement to mislead, and in the ordinary way of business, contradicts these interested witnesses, and shows that instead of the witness having been in Pittsburgh buying a Pennsylvania farm for himself and his young wife with $28,000 of his father's money he was at home in Louisville, Ky., earning his salary of $100 a month in the way his duty required.

Nor are the books without corroborating testimony. C. P. Weaver was a clerk in the employment of the elder Fabel for sev-

eral years and until September, 1876. He testified (37) that whenever Philip Fabel went away from home he, witness, kept the books, and made the entries therein. He knew nothing of Philip having gone to Pennsylvania to buy a farm from Dippold. Never heard Philip speak of a farm he had bought from Dippold (37).

The ledger of the elder Fabel which Philip produced under compulsion showed an account kept by the father against Philip Fabel, the respondent, and in which were charged the sums of money he paid Philip during the year 1876. These sums amounted to twelve hundred dollars (65). But the account did not show $10,000 which was paid in cash (they say) when the deeds passed, nor $7,600 in discount of Philip's notes, nor the several loans, aggregating $10,000, advanced in 1875. This is made more significant by the testimony at page 63. Once before, when attempting an explanation on the witness stand of this $28,000 purchase money, he had said that his father kept an account of it, against him, and he also said that his father told him that he kept such account. But while the book and the account cited do show that much smaller sums were charged to Philip Fabel when he received them from his father, they are silent as to this $28,000. The inference is that large sums not appearing, none such were paid by Frederick Fabel.

The ledger also showed in an account of Frederick Fabel just what sums he expended during and including the very time that Philip said (63) his father was supplying him with $17,600 on account of this purchase money, but it shows no such disbursements. His father drew out cash, so the ledger says (66), in January, 1876, $287; in February, $97; in March, $84; in April, $448; in May, $386, and in June, $329.

The ledger by the Bills Payable account showed that the elder Fabel instead of being a capitalist with means so abundant that his son, without note, comment or objection of the father, could loan to his father-in-law $10,000 in 1875, and could the following year, also without comment or objection from his father, withdraw $17,600 more to buy a Pennsylvania farm for himself and wife—that instead of being a capitalist with so plethoric a purse as that he was, in fact, himself a borrower in his business. Thus it appears (66) that about the time of this alleged purchase, viz.: on

February 7, 1876, he borrowed $2,000 from a bank; on March 25, $2,000 more, and on April 7, $3,000 from another.

After respondent Fabel had obtained the large bills from J. William Anderson, he said he kept the $10,000 on his person or in the store for four or five days before taking them to Pittsburgh. When he went there he didn't carry these large bills, six of one thousand dollars and eight of five hundred each, in his pocket book, but in his satchel (53). After reaching Pittsburgh he went to the grantor's house, on the land in question, about twenty miles down the Ohio river, but he did not pay him the money there. Instead of that he and the grantor drove in the latter's carriage eight miles towards Pittsburgh to a station called Sewickley, where Sharp McDonald lived, on the line of the railroad over which Fabel had passed in going to the grantor from Pittsburgh (52-53). Here, he says, he paid over to Dippold, in McDonald's presence, $10,000 cash and gave him his prommissory notes for $8,000 more and received the deeds. These had been already signed and acknowledged, but the notary was not present at the delivery. The only witnesses to the delivery were the respondents, Philip Fabel and John Dippold, and Sharp McDonald. No other member of the grantor's family or of McDonald's household witnessed the payment of the money, and no other person testified to Philip Fabel's presence in Pennsylvania on January 26, 1876. No receipt was given or release of any kind to witness the discharge of the grantor's alleged indebtedness (52-55).

After getting the deeds he did not leave them in the office of the Recorder of Deeds and mortgages, but he took them unrecorded with him to Louisville, and so left them until December, 1877, about a year and ten months, when, he says, (57) he sent them to Sharp McDonald to be recorded. Sharp McDonald kept them until February 16, 1878, when he sent them to the Recorder's office and they were put on record just on the eve of the bankruptcy (144-145). Just at this point in Fabel's testimony (foot of 57 and top of 58) the witnesss incautiously remarked that he had written to Sharp three or four letters, but he had not kept any copies. McDonald, when interrogated about letters, admitted having received one, but he didn't know where it was. He was not then in the habit of filing his letters, although he did at the time he testified, he said, (152, 153). It is a suggestive fact that each of these

three witnesses, the bankrupt, the grantee and the son-in-law, McDonald, all destroyed, or lost, or mislaid, so that they could not produce them, every scrap of written evidence which might have thrown light on this case, Frederick Fabel's account books only excepted, and we have seen the effect of these when produced on compulsion.

After respondent, Fabel, returned home, he said he wrote a letter to the bankrupt (neither a copy nor the original could be produced) offering to discount the notes if the bankrupt would bring them to him (57). Accordingly Dippold did so, witness said, and for Philip Fabel's promissory notes of $8,000 Philip Fabel paid him $7,600 of Frederick Fabel's money. He paid it to him in cash—no tell tale checks. He testified he didn't like the check system (57). These notes were not produced, and no entries appeared on Frederick Fabel's books to witness the investment.

Such was the remarkable, we may say reckless, testimony given by the respondent, Fabel, on our examination, and he was not recalled in his own behalf.

Complainants called witnesses to impeach Fabel's testimony. We have already adverted to the witness, Weaver, who had been a clerk for Frederick Fabel until September, 1876, and during the time when these deeds were made and the transactions were had which led to them, as alleged. He testified that Frederick Fabel made it a rule to deposit his cash every day, that he did not keep large amounts in the store, and he had never during the several years he was employed there known of so large a sum as $10,000 being in the store—and he was there during the time Philip said he was hoarding it up to exchange for large bills. He had never known, he said, more than a day or two's accumulation of cash to be left in the safe (35, 36). This was, of course, to discredit Philip's incredible story about exchanging small bills, saved up in the daily receipts, and exchanged with broker J. William Anderson. Same witness also said he had never known an instance in which money was paid out in Frederick Fabel's business of which there was not an entry made of it on his books, and that it was customary to enter all cash transactions (37).

A witness who had examined the public directories of the city of Louisville from 1870 to 1876 to ascertain if any such person as J. William Anderson had lived in that city, testified that they con-

tained no such name; also that he had made diligent inquiry among the business men of Louisville about a broker of that name, and among them all, brokers, bankers and stock dealers, no one knew of such a person as J. William Anderson (70, 71). All the prominent and well-known brokers of Louisville testified that they knew all the brokers who had been doing business there in 1876 and 1875, but they had never known or heard of one of the name of J. William Anderson (70-75).

We put in evidence the bank accounts with Frederick Fabel produced by the officers of the banks with whom Fabel dealt (157-163.) Fabel said, it will be remembered, that he paid over the purchase money on January 26, 1876, and that he saved up $10,000 out of the receipts of his father's business to make the payment. To do this would have required about five weeks, assuming his statement true, that his father did a business of about one hundred thousand a year. Now look at the bank accounts. They show that during that time deposits were made regularly and of about the same size and frequency as at other times. The account on page 157 shows that his father, on January 6, 1876, was credited with the proceeds of a $3,000 discount, and that he checked out $3,283 on January 8, which left him $229 then. This account certainly does not indicate an abundance of cash for a son to draw upon *ad libitum*. On pages 160 and 161 appear the chief bank account which Frederick Fabel kept in January and February, 1876. It shows that cash was deposited almost daily, corroborating Weaver and contradicting Philip. Twice during the month his father obtained discounts at this bank, once $924.40 on the 25th January, at the very time when Philip would have us believe he was carrying $10,000 of large bills belonging to his father in his satchel to pay them over to the bankrupt in the presence of Sharp McDonald. About the time that Philip said he was paying Dippold $7,600 for the notes, viz., in February, 1876, his father was himself a borrower of $2,000, as appears from the proceeds of a discount credited to his account. The largest check drawn by Frederick Fabel on his bank that month was for $2,567.35; there was one other for $1,500, and all the rest were for less than a thousand dollars.

Comparing the deposits and checks of these two months with the ordinary transactions in Frederick Fabel's bank accounts, the inference is irresistable that nothing unusual in his monetary affairs

took place in those months, and makes to the last degree improbable the story that Frederick Fabel advanced any money to buy this land.

The respondent, John Dippold, was called by complainants and examined.

He testified that he had known Philip Fabel since about one year before his daughter married him in 1874. That he borrowed money from him at sundry times until the indebtedness amounted to $10,000 (79). Never gave him any due bill, or promissory note, or other evidence of indebtedness, and no memoranda of the loans were kept (80). Sometimes witness got the money from Philip's father, but oftener from Philip (80). (In Philip's testimony he said that *he* loaned the money to Dippold.) Witness borrowed it in sums of $1,000, $3,000, $4,000 (80). (Philip testified that he loaned to Dippold in sums of $500, $1,000, $1,500,) (see p. 50). To the inquiry, How long was the longest that you had any sum of (borrowed) money from him? he answered: I suppose I had some as long as thirty days; don't know whether I had any as long as sixty days. Now, if that were the fact, and his other evidence true, it would result that ten thousand dollars must have been paid out of Frederick Fabel's cash within sixty days prior to February 26, 1876; and that some indication of it must have appeared in his bank accounts, we think a reasonable inference. But an inspection of them at pages 157, 160, shows that no such sums were withdrawn from the banks. Nor is this vague and unsatisfactory testimony of Dippold's concerning the nature of the loans consistent with the equally vague testimony of Philip Fabel on the same subject. He says, on page 32: I gave him ten thousand dollars in 1875, as I said, off and on, and then ten thousand dollars when I got the deeds. And on page 50 he said in answer to the question, When did you commence lending money to Dippold? In the year 1875; probably in 1874. In 1875 he got the money. Now the meaning of Fabel's testimony is that Dippold was his debtor in some of the sums which finally aggregated ten thousand dollars during the most of the year 1875, while Dippold says he got it all within sixty days.

The witness (Dippold) says that he did not deposit any of this money that he borrowed, but that he paid it out—he didn't know to whom, except that he paid some of it to his son, who was cap-

tain of his steamboat. No entries of any of these loans were made on his books, or on his firm's books, as far as he knew, but he kept everything in his head (81). When he paid any of the loans he paid them in cash; didn't know that he ever gave Fabel a check. Dippold & Sons kept a bank account in Louisville (81). This money that he borrowed from Fabel was for Dippold & Sons, but he never reported the loans to the firm (82).

Another extraordinary variance, if they were truthful witnesses, occurs between Fabel's testimony concerning the negotiation that led to the deeds, and Dippold's on the same subject.

Fabel testified that Dippold offered to give him these deeds to secure him for the money that he had already loaned and for additional loans that Dippold wanted, and that he had written a letter to witness to that effect, which had been destroyed (54).

Dippold testified that he went to borrow more money which Fabel refused unless he would give him the deeds; that in the discussion which followed they could not agree, and Dippold went home to Pennsylvania. That Fabel then sent to Sharp McDonald and Sharp went to Dippold about the deeds, and it ended in Sharp's going down to Louisville and selling the farm to Fabel (83-35).

Dippold was examined as to his application of the purchase money. He utterly failed to account for it, except by the general assertion that he paid notes with it (86, 87). He made contradictory statements of where he kept it. On page 86 he says he deposited some of it in the Tradesman's National Bank of Pittsburgh, and on the next page he says he kept the money at home until he paid off the firm's notes.

A very suggestive fact, and calculated to strengthen suspicion of the testimony of these respondents, is that in this transaction, as they describe it, they seem to have avoided making written evidence, when in the ordinary way of transacting such business they necessarily would have made it. Whenever either of them in his examination was driven to an admission of a letter, or a note, or any kind of writing, he invariably replied to the inquiry as to its whereabouts, that it could not be produced. Thus Dippold, at pages 88, 89, said that Philip, after they had left McDonald's house and returned to Dippold's on the occasion of the delivery of the deeds, gave him a writing to the effect that if the consideration

of the deeds was repaid to Fabel within three years, Dippold should have the farm back; this writing, he said, he put in his safe "and never have found it since."

Again, on page 89, he said that Philip's father wrote to him not to have Philip's notes discounted, and when asked where the letter was replied that he didn't know, "I wouldn't save such a letter as that." When he got $7,600 for these notes from Fabel in Louisville he said it was paid in cash, and in all of his money transactions with Fabel he "never knew him to give me a check of any kind."

The same circumstance repeatedly occurred in Fabel's testimony. Letters, notes, memoranda were made and received on several occasions, but they had been destroyed or lost and could not be produced.

Complainants called creditors of the bankrupt and proved large indebtedness on his part existing at the time these deeds were alleged to have been made, and continuing down to the bankruptcy (120-122, 128).

They proved by two of these creditors that the respondent Dippold in January, 1878, only a month before the bankruptcy and two years after the deeds are alleged to have passed, declared that this land was his own and was in his own name (131, 134).

Complainants then rested, and the respondents called two witnesses, Sharp McDonald (138), late a son-in-law and partner of the bankrupt, and Notary Smith, who took the acknowledgment of the deeds. What was very noticeable was their failure to call any of the respondents, or to make any explanation of the extraordinary facts which Fabel and Dippold had testified about in the complainant's case. They did not call the bankrupt's son, Jacob, who kept the account books of Dippold, and who knew, Dippold said, of the use that had been made of some of the purchase money (90), and whom, he said, he had told to give him credit on Dippold & Son's books for the purchase money (91), (the books show no such entry) nor did they call the other son who was captain of the steamboat, and to whom the bankrupt said he had paid a portion of the money got from Fabel (81). But although they failed to call these sons, they did call to corroborate their strange story Sharp McDonald.

He testified that at the bankrupt's request he went to Louisville to sell the land to Fabel, and that after about a day's negotiation he did make an agreement of sale on the basis of $28,000.

Now, that is a distinctly different fact from that described by both Fabel and Dippold, and as we have already seen these two differed materially and irreconcilably. Fabel said the sale was made by correspondence, Dippold said that Fabel wrote to McDonald and McDonald came to see him and then he authorized McDonald to go to Louisville. But the stories of Dippold and McDonald, who live not far apart and who was often together, vary not so much as do those of Fabel and the others between whom communication was less easy and frequent.

McDonald said that on his return the deeds were made out, and then Fabel came on and paid over $10,000 cash, gave his notes for $8,000, and took the deeds. That young Jake Dippold, the bankrupt's son, who was his bookkeeper, drew the deeds under witness' direction, either at witness' home at Sewickley or in Pittsburgh, and that they were acknowledged at his home. In that testimony there are at least three things which, in an investigation of this sort, would be remarked as suspicious. (1) Having deeds of the importance of these drawn by a young bookkeeper, under the direction of the grantor's son-in-law and partner, who was also without any knowledge, or pretension of knowledge, of conveyancing. (2.) Having them drawn in the secrecy of McDonald's dwelling house at a time when these three men, the now bankrupt, his son and McDonald daily met in their ordinary business at the office of Dippold & Sons, and of Dippold & McDonald, which was shared in common by both firms. (3). In having the ceremony of acknowledging the deeds done at the same place of secrecy and where there might be no other witnesses than those who were desired.

Witness further testified that Fabel took the deeds home with him, and more than a year afterward sent them to witness to have them recorded. This, he said, he neglected to do until Dippold was about failing when he had them recorded.

On cross-examination he testified that Fabel sent the deeds to him by mail (143); then he varied this by saying he was not sure that they did come by mail, that he was away from home at the time they came, and they were handed to him by his clerk, and he didn't know where that clerk was now (144). When he got them

he put these unrecorded deeds in the grantor's safe, with whom he was then in partnership (144). Think of it, these unrecorded deeds, conveying $28,000 worth of property, put in the power of John Dippold by the man to whom they had been entrusted for the purpose of having them spread on the record. Dippold didn't want him to record the deeds, he said, and in order not to injure his credit, and so that he might get his own matters straightened he kept them off the record (145). He saw $10,000 paid over, but he didn't count it; his impression was that it was a large pile of money (148).

Fabel's testimony was that it was six thousand dollar bills and the rest five hundred dollar bills (33). Dippold's that it was in hundred dollar bills, a couple of thousand dollar bills and some five hundred (86).

As to the letter which witness received from Fabel witness didn't know where it was; although he filed his letters now he did not do so then (152).

Notary Smith testified that he took the acknowledgments to the deeds at the time specified thereon (153); but his testimony shows that his memory is not to be relied on, for he testified on one day that the deeds were in his handwriting, though when subsequently recalled he testified that he was mistaken and that the handwriting of the deeds was not his at all (155).

This concluded the testimony. The respondents rested without introducing any written evidence whatever to support the story told in complainant's case, and without offering any explanation whatever of this transaction between a failing merchant and his daughter and her husband. No book entries were shown on the account books of Dippold & Sons, of Dippold & McDonald, or of Frederick Fabel, and they all kept such books and employed bookkeepers; no letters, though several were said to have been written in and about this transaction, nor was their absence satisfactorily accounted for; none of the promissory notes of Philip Fabel, though four were said to have been given, and their absence was not accounted for; none of the promissory notes which Dippold said he paid with the purchase money. Yet all of these writings in the ordinary way of business could have been produced by the respondents, if the transactions were in fact *bona fide* and not part of a conspiracy.

The cause was argued in the District Court before his honor Judge Acheson, and on August 28th, 1885, he filed an opinion and ordered a decree to be drawn dismissing the bill. This opinion is to be found on pages 10 to 17 of the printed record.

The learned judge, after a consideration of the evidence, and a succinct summing up of the facts therein stated (14): "Certainly the case is an uncommon one, and it must be conceded that it is attended by some circumstances tending to excite suspicion as to the integrity of the transaction."

But on reaching this result in the consideration of the testimony, instead of holding the defendants bound to explain the suspicious transaction, which, if honest, they could have had no difficulty in doing; instead of holding that the condition of the proof shifted the burden on to the respondents, the learned judge in his opinion takes up the suspicious circumstances, one by one, and shows that each of them is not absolutely irreconcilable, separately, with good faith, and does not consider at all the overwhelming effect of these circumstances concurring. He then adopts the testimony of Sharp McDonald as true, who as late son-in-law and partner and successor in business to Dippold, was the advisor of this whole transaction, and the learned judge relies upon his testimony in decreeing that the bill be dismissed.

From that decree appellants appealed to the Circuit Court of the United States for the Western District of Pennsylvania, and the cause came on to be heard May 24th, 1886, when that court likewise decreed that the bill be dismissed.

At the time of announcing this conclusion, his honor, the learned Circuit Judge McKennan, stated publicly from the bench, that, if this cause had come before that court as an original case and not by way of appeal with the opinion of the District Court against the complainants, the Circuit Court would have held the deeds fraudulent; but they were unwilling to reverse the lower court, when to do so they would have, in effect, to find that three witnesses in the case had committed perjury. Thereupon the decree was entered (165) from which this appeal is taken. It was allowed September 25, 1886, citation served October 4, 1886, and appeal filed in this court October 11, 1886.

SPECIFICATIONS OF ERRORS.

(1). The learned Circuit Court erred in entering the following decree, to wit:

"And now, to wit: July 27, 1886, this cause having come on to be heard upon final hearing on May 24, 1886, and having been argued by counsel, and the court being fully advised in the premises, it is ordered, adjudged and decreed that the bill herein be dismissed at the cost of the appellants. *By the Court.*"

(2). The learned court erred in not decreeing that the deeds of John Dippold and wife to Philip Fabel and Kate Fabel, his wife, were fraudulent and void, and that the property conveyed thereby of right belongs to the complainants in trust for the creditors of John Dippold.

APPELLANT'S BRIEF OF ARGUMENT.

The evidence to which we have referred in the statement of the case discloses many badges of fraud; more, indeed, than usually appear in this class of cases. The deeds, or the making of them, appear clothed in mystery and suspicion, and they reek of facts that commonly attend the perpetration of such frauds. These indications of fraud we shall particularly point out a little further along in our argument. If they do appear, they shifted the burden of proof and raised a presumption against the *bonam fidem* of the deeds which, in the absence of full and clear explanation to the satisfaction of a chancellor, would become absolute and conclusive.

So this court has decided.

Clements vs. Nicholson, 6. *Wallace*, 299, was a bill like this to set aside fraudulent conveyances, one of them of a stock of goods, the other of lots of land. In reversing the lower court and decreeing the conveyance of the lots to be void, this court said:

No attempt is made to explain the contradiction of the answers of (defendants) by the deeds as to the amount of the consideration alleged to have been paid for the lots. The answers of both are silent as to the mode of payment. This rendered disproof of the allegation of the amount difficult, if not impossible. *The facts disclosed create a strong doubt of the integrity of the transaction between Moore and Nicholson, and threw on Moore the duty of making a full explanation and the burden of proof to sustain it.*

And the rule was asserted by the highest court of Maryland in Zimmer vs. Miller, reported in 1 *Central Reporter*, 700. Many of the *indicia* of fraud in that case were the same as in this; the grantors were indebted to complainant; the grantors remained in possession after the conveyance of the land; there was delay in recording the deed, which was to a son of the wife of grantor. Said the court in ordering the deed to be cancelled:

It would, therefore, seem to be an established rule t *at when those circumstances are of such a character as to lead to the inference that there has been a fraudulent intent, the onus of disproving fraud rests on the parties to the transaction.*

This rule was recognized and followed in Marks vs. Crow, 14 *Oregon*, 382. In that case Crow executed a conveyance to his brother of certain land while he was indebted to complainants. They obtained judgment and subsequently brought suit to have the conveyance declared fraudulent. Said the court:

The appellants, under the circumstances, could not by a general assertion that the debt as claimed was due, make out a defense. The transaction bore the semblance of an attempt to cover up the property, and it was the appellants' duty to show that the indebtedness existed. E. J. Crow should, under the circumstances, have been able to point out definitely the various items constituting the indebtedness. Any other rule, where property has been shifted from one member of a family to another and creditors left unprovided for, would lead to the most flagrant frauds. The creditors could not show that the indebtedness claimed to be the consideration of the transfer did not exist. They could do no more than inquire when and under what circumstances it was created, *and unless the recipient of the property could give a clear and precise account of the items constituting it, they should have the right to ask the court to infer that it was a sham and pretense*—otherwise, property might be put beyond the reach of creditors with impunity.

The wisdom of the rule is apparent. The parties to a deed of bargain and sale have always at command the means to show its *bona fides* if it has it. If Philip Fabel received twenty-eight thousand dollars from his father which was paid to Dippold how plain could he have made that fact appear, having in his control, as he testified, his father's books, papers, accounts and property, and having been at the time, he said, his father's confidential clerk as well as trusted son. How easy to have shown where his father got this money from, the bank from which it was withdrawn, the securities converted, or the investment realized on. There must have been some satisfactory reason that moved his father to withhold the entry of its payment from his account books, especially his cash book, which was kept by him for the express purpose of recording all transactions involving the receipt or expenditure of cash, and that reason would ordinarily and naturally be communicated to the bookkeeper, whose duty it would be, unless specially instructed otherwise, to make the entry of cash paid out through him. How easy then if there were truth and good faith at the bottom of this

transaction to make plain these mysteries, and to dispel these suspicions. How easy, too, if the deeds were honest to have called Kate Fabel and John Dippold and Philip Fabel and Mrs. Dippold and have had them explain why Kate Fabel was made a grantee in joint tenancy with her husband of her father's farm bought from him with twenty-eight thousand dollars of Frederick Fabel's money; and John Dippold and Philip Fabel might have explained while they were in the way of explanation how it was that in their answers they swore that the consideration was paid by the grantees when, according to their evidence at the time of making the answers, they knew that the consideration money came from Frederick Fabel.

At any rate the respondents did decline to take up the burden which the rule contended for imposed upon them. The consequences of their refusal ought to have been to convert the *prima facie* presumption into a conclusive one. Under the rule we were entitled to a decree if we were within it.

There appears in the evidence offered by the complainants divers *indicia* which have in other cases been held badges of fraud. These were.

(1.) Indebtedness of the grantor at the time of making the conveyances and continuing down to his bankruptcy two years later (128, 130)

(2). Relationship between the grantor and grantees (9). Neither of these two facts would be badges of fraud in themselves; but if there are other circumstances to discredit the deeds then they are important because they furnish motives for the fraud.

Forsythe vs. Matthews, 14 *Pa, St.*, 100.
Lloyd vs. Williams, 21 *Pa. St.*, 327.

(3). Possession and use of the land by the grantor after its conveyance in the same manner as before.

It appears from the testimony of Fabel himself that ever since the date of the deeds Dippold has lived on the land, collected all the profits, received all the products, and paid all the taxes, while the grantees have had no benefit from it whatever (60). In many cases such possession has been considered evidence of fraud.

In Callan vs. Statham, 23 *Howard*, 477, this court held that the grantor's possession of the land after conveyance was a fact requiring explanation. At the close of their opinion determining that the decree of the lower court cancelling the deed was correctly entered, they said:

The continuance of the vendor in the possession and occupation and full enjoyment of the premises, the same after the deed as before, and absence of interest in the subject manifested by the vendee are circumstances not satisfactorily explained.

In Starr vs. Starr, 1 *Ohio*, 328, it was so held, the court saying:

"The circumstance that Ephraim Starr, the grantor, continued to exercise control over the property, and sell and dispose of it, receiving the purchase money, and making conveyances, is an additional badge of fraud."

Likewise in Purkitt vs. Polack, 17 *California*, 327, it was said:

Positive proof of fraud is seldom to be obtained, but the fraudulent intent must be gathered from the circumstances, and in this case, the control of the property by the grantor after the alleged sale, his indebtedness to the plaintiff at the time, the absence of the grantee from the State, and the failure on the part of the latter to show any payment of consideration, were *prima facie* proof of fraud.

Every one of these indications, and many more beside, are in this case. True, it will be denied that there is not here proof of payment of consideration, nor do we mean to assert that there is no such proof, but the incredible story as to whence it came, in the absence of explanation, destroys its force and renders it worthless.

Possession of the land by the grantor after the conveyance was one of the badges of fraud relied on to overthrow a deed in Hudgins vs. Kemp, 20 *Howard*, 45.

(4). Secrecy and concealment attending the making of the deeds, and in withholding them from the record for two years.

So secret was this transaction that no one was witness of it or had knowledge of it excepting Sharp McDonald, son-in-law and partner of the grantor, until the deeds were recorded more than two years after, and during all that time Dippold's creditors were treating with him, and renewing his indebtedness, supposing him the owner of the house and farm (128, 131) where he had lived since

1860, and still lived (76), and still does live. He distinctly represented (131, 134) that he owned it to two of his creditors within three months of his bankruptcy, and nearly two years after the deeds were delivered, which, he now says, divested his interest.

Withholding the deeds from the record was especially suspicious in this case, for these reasons: The purchaser was a non-resident of the State where the land was; he lived five hundred miles away and had to depend on his paper title entirely; although in the negotiations and dealings with Dippold up to the delivery of the deeds he had shown amazing recklessness, according to his own story, yet at the delivery he had taken the most extraordinary and unnecessary pains and had traveled in person from Louisville to McDonald's house in Sewickley to pay over cash and personally take the deeds, and was therefore in the county where the law provided for the record of the deeds in order to guard against subsequent purchases. The natural and customary thing for him to do was to deposit them at the Recorder's office; but instead of so doing he carefully buried them safe from the creditor's knowledge in Louisville, Kentucky (57), and took the risk of a needy man's raising money on the lands long after the six months had elapsed during which they were entitled to priority.

Nor was this the only precaution which was taken to prevent light being turned on this transaction. Excepting the deeds themselves, there is no scrap of writing in existence to witness any of the steps in the sale of these lands as alleged. No check was ever drawn, no memorandum of indebtedness ever given; no receipt, or discharge, or release; no entry ever made on any book of account, which could show the transaction or any part of it. Yet the parties were experienced business men, keeping books of account, having bank accounts, accustomed to draw checks, usually careful to take receipts, and to exact written evidences of indebtedness.

Was suppression of all written evidence for the purpose of concealing the transaction from Dippold's creditors; or was it a part of a conspiracy to prevent the discovery of proof of the real nature of this transaction? For whatever purpose they were badges of fraud and needed explanation. We know of no case so flagrant as this, but there are judicial decisions to that effect.

In Coates vs. Gerloch, 44 *Pa. St.*, 43, a wife withheld from the record a deed made by her husband about eight months, and in

holding it void to effect her husband's creditors the Supreme Court of Pennsylvania said:

"There is another aspect of this case not at all favorable to the claim of the wife. It is that she withheld the deed of her husband from record until December 2, 1857. In asking that a deed void at law should be sustained in equity, she is met with the fact that she asserted no right under it, in fact concealed its existence until after her husband had contracted debts against which she now seeks to set it up."

In Folsom vs. Clemence, 111 *Mass.*, 277, the court in affirming a judgment when the jury had passed on the queston of fraud, said:

"The judge rightly ruled that the arrangement or understanding in regard to withholding the mortgages from record unless the mortgagors should have trouble, did not render them void *but was a matter entitled to consideration by the jury in passing upon the question of fraud at the common law.*"

(5). Things done in the transaction which are out of the usual course of such business, are signs of fraud.

We have already adverted to several extraordinary circumstances attending this transaction, and some of them have been adjudged evidences of fraud under this head, in other cases. Thus, the absence of accounts between the parties, when the transfer purported to be in consideration of a debt due to the grantee, was so held in McDowell vs. Goldsmith, 6 *Md.*, 319. That was a bill to set aside a fraudulent conveyance. The following from the opinion of the court is so apt under the evidence here that we quote it:

The court cannot, however, shut its eyes to the extraordinary account given by the defendant of his dealings with (the grantor). It must strike the mind as strange, indeed almost incredible, that transactions involving such large amounts of money should take place with utter disregard of the ordinary precautions which persons having any regard for their interests usually observe. * * There is unquestionably about this whole case a character of reckless carelessness which is absolutely amazing, and which in the eyes of prudent men cannot fail to stamp it with suspicion.

If the court will read the examination of Fabel, pages 29 to 35 and 50 to 67 of the printed record, we think it will agree that that language might be fairly taken to characterize his evidence. Not

only was the carelessness evinced in the absence of accounts and of all of the usual evidences of indebtedness and of the discharge thereof in the loans that were said to have been made leading up to the sale, but also in the taking title to the land without the customary precaution of professional advice. Think, too, of the incredible statement that old Frederick Fabel, a cautious, economical, industrious and experienced business man, invested more than a quarter of his fortune that he had been a lifetime accumulating in the purchase of a farm five hundred miles away, which he had never seen, which he could never use, at the mere suggestion of his son, and to aid his son's wife's father; that he had the conveyance, thus procured with his money, made to the grantor's daughter in joint tenancy (with right of survivorship) with his son.

In Grubbs vs. Greer, 5 Caldwell (*Tenn.*), 160, the purchase of property for which the grantor had no use, was considered (together with other suspicious circumstances) an indication of fraud. The defendant Fabel, himself, testified that the land had been of no use to him, and he showed the utmost ignorance as to its character, productions, taxes, etc., (60).

In Sands vs. Codwise, 4 *Johnston* (*N. Y.*) 566, the grantees pecuniary inability to make the purchase was one of the indications of fraud. Here the grantees were confessedly without means to buy this land, and the tale that the funds were advanced by the father of Philip is so indefinite and preposterous that it cannot for a moment pass as the clear and full explanation which should satisfy a chancellor's conscience.

In Danjean vs. Blacketer, 13 *La. An.*, 597, circumstances out of the usual course of business were held indicative of fraud as appears in this extract from the opinion:

"So that he bought a lot, stable and horses and a variety of other property without ever having seen them. Besides, he buys all the books, assets and credits belonging to the stable which had accrued after 7th October, 1856. *Such conduct is not in the usual course of business.*"

In other cases unusual and unnecessary formality in paying the consideration has been esteemed (in connection with other badges of fraud, of course,) indicative of fraud. In Goldsburg vs. May, 1 *Little*, (*Ky.*) 254, pains taken to invite witnesses to see the sale made, and bantering and ostentatious negotiation about the price;

in Adams vs. Davidson, 10 *N. Y.*, 311, cautioning a witness to pay attention and recollect what he should hear; in Comstock vs. Rayford, 20 *Miss.*, 369, telling witnesses that the transaction was fair; in King vs. Moore, 42 *Mo.*, 551, parade of payment in the presence of witnesses, were severally deemed suspicious circumstances because unusual and unnecessary.

But how much more unusual and unnecessary were the measures taken by the respondent Fabel in paying the consideration here. The ordinary way would have been to forward the money to a bank, or other financial agent of responsibility, to be paid over upon the advice of a lawyer, when proper title was delivered. That would have been a simple transaction within the experience of most every businsss man. Instead of that (Fabel says) that he saved up the cash receipts of his father's business until he accumulated ten thousand dollars (63). That would have been the entire receipts of his business for more than a month (60). He said he didn't deposit any of this cash, but kept it in the safe at the store (63). This was contradicted by the bank account, which shows numerous deposits of cash at that time (160). Then, he said, he employed a broker, whom no one else in Louisville knew or had ever heard of, and who, he said, immediately after went to Europe and never returned, to get him large bills in exchange for the cash which he had saved out of the receipts of his father's business (33). In this way he got six thousand dollar bills (he said) and eight five hundred dollar bills; these he put into his satchel instead of his pocket book (33) and carried them to his father-in-law's house. He didn't pay them over there, however, and take his deeds, as one would have expected, but together the grantee and his grantor go to the house of McDonald eight miles away, and in the presence of this partner and son-in-law of the grantor only, no one else being present, no lawyer, not even the notary who took the acknowledgments, he said that he paid over these large bills, gave his notes and took the deeds.

What reason could these parties have had for this awkward and inconvenient and unusual mode of business, except to make testimony for use when these deeds should be attacked?

But, from the standpoint of the defendant Fabel's testimony as to where the money came from, and which made the purchase an investment of his father, the most extraordinary fact in this trans-

action is the joining of his wife as a grantee in these deeds. That is extraordinary, on the theory of the truthfulness of his testimony and the good faith of the deeds; but entirely natural and reconcilable with our theory that the deeds were the product of a conspiracy between Fabel and the bankrupt. Dippold would then have required that his daughter be joined as a grantee lest his own interest, and that of his own flesh and blood, should be entirely lost in the land. So, it would be, if he conveyed to Fabel in severalty; and so, if Frederick Fabel, father, had paid value for it he would have insisted upon its going. Joining in the grant, however, this daughter with her husband would secure her title certainly for term of her life, and if she should survive her husband the entire estate would be in his own blood. No one can believe that Frederick Fabel, the calculating, cautious, prudent old chandler, who took the title of a ten thousand dollar house in which Philip was to live in his own name, ever invested twenty-eight thousand dollars in such conveyances as these.

The learned District Judge, in his opinion on dismissing the bill, said, page 14: "Certainly the case is an uncommon one, and it must be conceded that it is attended by some circumstances tending to excite suspicion as to the integrity of the transaction." And this he said at the conclusion of his summing up of the extraordinary circumstances shown in the evidence. He was evidently impressed with the unexplained fact, the joining of Mrs. Fabel as a grantee in the deeds, too, and comments on it, page 15, in a way that indicates he had trouble in reconciling it with good faith in the transaction. When the learned judge reached the conclusion which we have just quoted, he should have held the defendants bound by the burden of proof to the clear and satisfactory explanation of those suspicious circumstances, and failing that, he should have decreed the cancellation of the deeds as fraudulent, under the authority of the cases cited at the beginning of this argument.

And what clearer illustration of the justice and need of the rule could there be than is afforded by this case? Probably there never was an honest transaction which the parties could not show to be such by overwhelming testimony. If these deeds were honestly made by John Dippold at a time when he was heavily indebted to convey his homestead farm to the joint tenancy of his daughter

and her husband, who knew the justification thereof so well as the grantors and the grantees? And it would be beyond belief that the deeds should be so made without the parties having knowledge of the reason. Why, then, should they not be bound to explain? Who else could give testimony of the *bona fides* of what the learned judge (15) shows was an unexplained circumstance that ought to have been explained? If there was a good and sufficient reason for the lawful transaction of the title in these lands to his daughter and her husband, how easy for John Dippold to go on the witness stand in her behalf and describe it fully and openly. It was the natural thing to do. The craving of the mind for the respect and approval of friends and associates would have welcomed an opportunity to show that this matter impeached for fraud was untainted. It was the safe thing to do. Property of the value of twenty-eight thousand dollars, at least, was at stake. It was a doubtful case. If there was an explanation of this curious and suspicious circumstance it was in the consciousness of the defendants, and would not their learned counsel have taken care that it was brought before the court? Would not John Dippold have been called to describe every detail of the transaction, and all the other defendants to corroborate and sustain him? But they stood mute.

For these reasons we think the learned District Judge was in error in visiting upon the complainants the consequences of failing to explain the conveyance of the lands to Philip Fabel and Kate Fabel in joint tenancy.

We alleged in our bill as one of the grounds upon which we based our charge of fraud that these deeds were made "to the said Philip Fabel and Kate Fabel, his wife," neither of whom "were possessed of sufficient means to purchase the said properties." (Paragraphs 5 and 6, pp. 5, 6.) The defendants in their answers admit the conveyance as alleged, but deny that the grantees were without sufficient means. When they are called upon the stand by us, Philip Fabel admits that neither of the grantees had the means to buy, and testifies that all of the $28,000 was supplied by his father. This did not support the answers, but did sustain the allegation of the bill which the answer traversed.

Now, when we had shown this, the position deliberately chosen by the respondents at the time of answer, abandoned, when the re-

spondents, taking another stand, state broadly and generally that deeds conveying twenty-eight thousand dollars worth of land to a daughter of a heavily indebted grantor and her husband were made upon a consideration of that value furnished by one who had no interest and took none in the lands and was of no kin to one of the grantees,—is this not a combination of facts that should bring this case within the authority of Clements vs. Nicholson, *supra;* Callan vs. Statham, *supra;* Zimmer vs. Miller, *supra*, and Marks vs. Crow, *supra*. Was not the burden shifted?

But the conveyance to joint tenancy was only one of the facts that the learned District Judge thought needed explanation; because in his opinion he takes up, one by one, certain of the developments of the testimony and reconciles them severally with the decree that he ordered. Thus at page 14 we understand him as having in mind that inasmuch as Frederick Fabel, the father of of Philip, had the pecuniary ability so supply the purchase money, that therefore it is the prudent way to accept Philip's testimony that the father did furnish it, as true—intrinsically improbable though it be. If there were nothing before the court to distrust Philip's bold assertion that it was his father's money which bought this land, the learned judge's conclusion would doubtless be correct; but he seems to have overlooked the fact in this connection that there is much evidence that is inconsistent with Philip's assertion, and evidence, too, that is of indubitable quality. Thus, the books of Frederick Fabel, produced by Philip on compulsion, disclose no traces of the transactions which Philip narrates, but do disclose a state of facts existing in Frederick Fabel's business irreconcible with Philip's assertion that his father supplied the $28,000 to buy the land; as the charges against both Frederick Fabel and Philip Fabel at the time the deeds were delivered disclose that Frederick Fabel withdrew cash in January, 1876, $287, (66), and that Philip Fabel was charged with $1,200 during the whole of that year (65). Yet Philip swore that he saved up $10,000 of the receipts of the business which those books were provided and kept to account for, and on the 26th of January, 1876, paid it over to James Dippold, it being the money of Frederick Fabel. Why, then, was it not charged to either one or the other of them, in the same way as the lesser sums which were charged when withdrawn by them? It is unexplained. How was

it possible to withdraw $10,000 from the business of Frederick Fabel without his cash account disclosing it—a cash account is kept only for the purpose of disclosing all such facts. And is not some other explanation required than Philip's statement that whenever he paid out money to Dippold he would tell his father and "he would always make it good"? (31).

The bank accounts, kept by Frederick Fabel (157, 160), in January, 1876, contradict Philip. He testified (63) that he had kept the cash receipts in the store and had not deposited them until he had accumulated $10,000, which he then exchanged with broker J. William Anderson; and he also testified (67) that his father's gross sales amounted to about one hundred thousand dollars annually. Therefore, to accumulate $10,000 cash, he must have retained by him the entire cash receipts for one-tenth of a year, or about five weeks. Now, observe the bank accounts (157, 160). In the Western Bank account (157) but few deposits seem ever to have been made, but two of these were in the month of January, 1876, of the following amounts: $205, $374; in the Masonic Savings Bank, where the real banking business of the elder Fabel was transacted, an inspection at page 160 will demonstrate that from December 16, 1875, to January 26, 1876, which would be the period when Philip, according to his own statement, was keeping all the cash, Frederick Fabel's deposits were, if anything, rather more frequent and larger than usual. To our minds this is strong evidence to convict Philip of untruthfulness.

This showing of accounts is reinforced by the testimony of Charles P. Weaver, an entirely trustworthy witness, who said, on page 35, that all the cash coming in to Frederick Fabel's store was deposited promptly, and "we never held any over; it was always a point to deposit every day; that was a habit of the business." This witness had been a clerk for Frederick Fabel at the time the deeds here are said to have been made and delivered.

These account books contradict Philip in another and most material matter. He swore that he left Louisville about January 23, 1876, went to Sewickley, Pa., when he paid over to Dippold the cash purchase money on January 26, 1876, and was away from his business about a week or ten days (55). The books show that on these days every entry on the day book, the cash book and the ledger was made by Philip Fabel. But that would have been impossible if he

had been at Sewickley, which is 500 miles away from Louisville. And this contradiction is made more clear by the evidence of Weaver, page 37, who said, in answer to the question: "Whenever Philip Fabel was away from home, who made entries then on the books? A. I did—that is while I was with them." And the witness was with them at that time (65, 66).

Another thing apparent from both the account books of Frederick Fabel (66) and the bank accounts with him at pages 157-160, which we should think might have weight to influence the learned judge to a contrary conclusion if it had come under his observation, was this: Frederick Fabel was not of such ample means that he could disburse sums of $10,000 and $8,000 as mere trifles, matters of not much moment; but, on the contrary, these accounts show that such transactions were larger than he was accustomed to, and indeed there is not an instance in the years embraced by these accounts with his bank when he deposited or drew out so large a sum as the smaller of these. Moreover, they show that Frederick Fabel was himself a borrower at times, and instead of having a superabundance of capital, that he really had to borrow in order to meet the requirements of his business. We think that all these matters should have made his honor resolve against relying on Philip's testimony, even though it did appear that his father had means sufficient to buy this farm if he had so chosen.

The learned District Judge reconciled the possession of the land by the grantor six years after the delivery of the deeds, with *bona fides* in the transaction, because of the relationship between the grantors and grantees (page 15), and for this reason he lays aside that *indicium* of fraud.

It is rather a remarkable instance of disinterested charity if Philip Fabel, having no other means than his salary of twelve hundred dollars, took $28,000 of his father's money as an advancement (63), not for his own present advantage, but entirely for that of his father-in-law, who lived on it and used it after he had received the purchase money just as he did before, while those who put that money in it received no rent and no advantage whatever (60). Perhaps it was a reward for such virtuous conduct, that after Frederick Fabel's death Philip found no charge of any kind had been made against him for that advancement. But we submit that there is nothing in this relationship to relieve these parties

from fully and satisfactorily explaining these extraordinary features of the possession. Rather it is itself another indication of fraud. Why should not the defendants themselves have testified that the consideration was paid because the young son-in-law desired to provide for his wife's parents, and that therefore he the "financial son" took his father's money out of his father's business to invest it in a farm, if such was the fact, and not leave it entirely for the learned court to infer it? Indeed, the defendant Fabel said that he invested in the farm for the purpose of securing his loans, which is hardly consistent with the disinterestedness which the learned court surmised.

But if the land was bought for the purpose of assisting Dippold and his wife to a home, how easy it would have been for the people who knew the fact to have made it appear clear as the daylight. How easy to have described the interviews at which the plan was settled, to produce the witnesses and documents which were a part of the transaction. How rarely are papers wanting in an honest transaction to corroborate the words of witnesses at least, if not to set out the entire transaction! Whoever heard of an honest defence wherein a multiplicity of material papers are shown once to have been in the defendant's power, yet are not produced by them nor satisfactorily accounted for. Here, letters were said to be sent and received which if produced would settle the matter, but they are not produced and are said to be lost; notes were made and passed into the defendant's hand, but they are not produced and no explanation is vouchsafed. Account books which if the transaction were fair ought to be strong evidence for the defendants, though in their power, are only produced under the court's compulsion, and when produced show nothing of the matters which defendants say took place, and which they ought to have shown if defendants spoke truthfully.

The real point of this part of the case was the failure of the defendants to satisfactorily explain why Dippold has ever since lived on the farm and managed it, paid taxes, made repairs, taken all the profits just as he did prior to January 26, 1876, (60, 76). The burden was on them to do it, and they failed. The learned judge therefore erred in drawing his inference from insufficiently proven premises, and in not applying the rule as to burden of proof here also.

In his consideration of the fact that the deeds were not recorded until a few days before the grantor was adjudicated bnkrupt his Honor has not treated it as an indication of fraud, which was the only ground on which we urged it. We have never doubted that a deed operated from the moment of delivery, as between the parties, but our position was and is that when the statutes of a State provide that if a deed is not recorded within six months of the delivery it shall be postponed to a subsequent deed recorded before it, and a deed is not recorded for more than two years after its alleged delivery and until the eve of the grantor's bankruptcy, it is some evidence of fraud, more or less important according to the other facts in evidence.

Here the story is that these deeds were taken on payment of twenty-eight thousand dollars, without examination of title or other professional advice, even in the drawing of the deeds; that one of the grantees, the husband, being in the county where the law provided for recording the deeds, took them unrecorded to his home, five hundred miles away, where he kept them, he said, almost two years, and then sent them to McDonald by mail (as the latter says, p. 143—unrecorded deeds of the value of these sent by mail!) McDonald having received them, kept them unrecorded in the grantor's safe, accessible to both of them, until the eve of the latter's bankruptcy. And this was done by McDonald because the grantor didn't want them recorded lest they should interfere with his borrowing money (144), and during all the time that elapsed from the alleged delivery of the deeds, on January 26, 1876, to the recording of the deeds, on the eve of the bankruptcy, on Febary 23, 1878, the grantor was borrowing money from the banks (128, 130), and asserting that he was the owner of these lands (131, 134). Is not the non-recording of these deeds, in connection with these facts, evidence of fraud? Ought not these aggregated facts to be potent to determine the enforcement of the rule as to the shifting of the burden of proof, and to enforce the penalty on the failure to rebut or explain the suspicious *vestigia?*

The learned District Judge declined to enforce the rule of shifting burden of proof upon the plaintiffs' evidence. Had he done so, the defendants would have been held to a full and satisfactory showing of why these deeds were made to the grantor's daughter and her husband, of whom the consideration money came from—

not a reckless statement that shocks one's sense of propriety and the reasoning faculty, but a clear, explicit and consistent explanation—and in the absence of such proof the decree must have been in accordance with the prayers of our bill. But, instead of this, the learned court was of opinion (16) that on the plaintiffs' evidence the case was "so equivocal and of such doubtful significance, that it would be unsafe to decree the deeds void." But, certainly, in this the learned court overlooked two maxims, commonly applied to this class of cases; 1st, that a transaction to which fraud is imputable is always hidden; and 2d, that the witnesses to it are usually the parties charged with the fraud. But we failed to impress upon him that this case required the application of the rule framed from the necessity of meeting those difficulties in this class of cases in order to prevent miscarriage of justice, viz: That when the complainants show suspicious circumstances, *vestigia* of fraud, the defendants are bound to clear up the suspicions, or failing to do so, to stand convicted and to yield up the thing covered by the fraud. Now, in this case, who gave the testimony that threw around it the elements of doubt and equivocation referred to by the learned judge? Who, but Philip Fabel and John Dippold, the defendants, themselves, and the very parties who knew all about the transaction, and who must have been able to have made it appear if it were honest? If they had, on the complainants' examination, thrown around the case doubt and equivocation, why did they not, in their own behalf, go upon the witness stand and clear away these "doubtful and equivocal" circumstances.

The learned District Judge (16) says that the defendants did introduce "testimony of the utmost importance and value to them," and he refers to that of the notary, who testified that he took the acknowledgement of the deeds at the time they purported; and to that of Sharp McDonald, that he had visited Louisville at Dippold's instance, and concluded the negotiations for the sale to Fabel. His Honor characterized this testimony as corroborative of the story told by Fabel and Dippold, but he does not say that it explains the "doubtful and equivocal circumstances;" nor could it be considered as so doing, for there is no attempt of the sort. It in no way shows why, or how, Frederick Fabel's money was or could be extracted from his business to the extent of $28,000—his gross annual sales were only $100,000—without any trace of it appearing

on his books of account, or in any contemporary writing whatever; or, why the title was conveyed to the daughter of the grantor jointly with her husband, etc., etc. Nor would we expect that any one could explain these circumstances except the parties themselves, Philip and Kate Fabel, John Dippold and his wife. The very fact that these deeds were prepared by a young book-keeper, son of Dippold, under the superintendence of McDonald, his son-in-law, and not by a lawyer, was a suspicious circumstance, needing explanation. Add to that that these deeds were acknowledged in Sharp McDonald's house, whither the grantors travelled eight miles for that purpose, and the notary was taken from Pittsburgh, twelve miles, although magistrates of competent authority were in easy call of the residence of the grantors; add further, that Philip Fabel travelled five hundred miles in order to pay over this purchase money in Sharp McDonald's presence and in his house, but not any other witness; and it seems to us that this very corroborative testimony calls loudly for explanation. Indeed, the facts that both the notary and Sharp McDonald testified to, were just such as parties conspiring to perpetrate a fraud might be expected to fabricate, and call in witness with a view of meeting future attack. Sending McDonald to investigate a sale to the vendor's son-in-law; the parties travelling to McDonald's house to execute and acknowledge the deed and to pay over the money in his presence—these are just the things that parties planning a fraud would be apt to think of and to do. But the defendants' counsel did not ask their witnesses to explain why Mrs. Kate Fabel was a grantee in the conveyances; yet Sharp McDonald's relations to the parties and to this transaction ought to have made him familiar with all its details.

Here is another matter in connection with McDonald's testimony, which we deem worth notice. The story told by Dippold and McDonald, about the latter's going to Louisville to negotiate the sale, is not consistent with Fabel's testimony on page 54 of the record. He was there examined closely as to how this transaction was made, and he testified that it was made by the parties themselves, saying that the offer was made by Dippold by letter, which had been destroyed. And this variance is the more significant, because Fabel's attention was in that connection specially drawn to Sharp McDonald, and the witness proceeded to describe the alleged meeting at McDonald's house as if that were the latter's first connection

with the transaction. No word did he utter as to McDonald's going to Louisville to negotiate.

It does seem to us that this remarkable variance, remembering that Fabel's testimony was given two years before Dippold's and McDonald's, when the facts ought to have been fresh in an actor's memory, stamps as utterly false the story which Dippold and McDonald told about the latter going to Louisville to negotiate the sale.

Without further comment upon an unpleasant case, but in which we believe that to prevent a gross wrong and miscarriage of justice this court must interfere, we submit the complainants' case.

D. T. Watson,
William S. Pier,
Counsel for Appellants.

Office Supreme Court, U. S.
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IN THE

Supreme Court of the United States.

No. 142, October Term, 1889.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

JOHN F. DRAVO and ROBERT ARTHURS, Assignees of John Dippold & Sons, Appellants,

VERSUS

PHILIP FABEL and KATE FABEL, his wife; and JOHN DIPPOLD and NANNIE DIPPOLD, his wife, Appellees.

APPELLEES' BRIEF.

G. A. JENKS,
Counsel for Appellees

BROOKVILLE, PA.,
Jeffersonian Democrat Print,
1889.

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VERSUS

PHILIP FABEL AND KATE FABEL, HIS WIFE; AND JOHN DIPPOLD AND NANNIE DIPPOLD, HIS WIFE.

APPELLEES' BRIEF.

COUNTER STATEMENT.

The statement of the case by Appellants is liable to be misleading. In some instances very material facts are omitted; in others alleged facts are stated which do not appear in the record.

On the 1st page of their brief it is said: "When the assignees came to collect the assets, they found among other property lately owned by the bankrupt, but then claimed by his relatives, a valuable farm situated in Beaver county, Pennsylvania."

There is no evidence that any other property was sold to, or claimed by, any relative of John Dippold other than the land purchasd by Philip Fabel; nor was there any evidence to show there were any alleged fraudulent transfers to any other persons.

On page 3rd the statement is made that "his father's books showed accounts against those indebted to him, *but they showed no debit against the witness, Philip Fabel.*" [28 and 30.]

This statement is defective in that it does not say that no accounts of the father against his children was ever kept in the books of what he advanced or gave them; [R. P. 30] but that for such advances, the father himself told the witness, he kept a strict account, but the book in which that account was kept, neither the witness nor any of the brothers or sisters had been able to find. [R. P. 65 and 68.]

On page 4th the statement is made, "Although his father kept all such books for the purpose of showing his financial operations and condition, no checks and no account in any book would show these transactions."

This statement is erroneous because it does not appear, and the contrary is proven. That the father kept no books in which his accounts with his children were ever kept, or if kept, that no such books were ever found. It also appears that no checks were given by the father for either these advances to Philip Fabel, nor to any other for like advances.

The statement on the same page that "he drew some of it from bank on his father's account," in the testimony, does not relate to the $10,000 advanced to Philip Fabel, but to money loaned from time to time by Frederick Fabel to John Dippold; and when this was done the checks, if any, of which the witness is not certain, were drawn to cash. [R. P. 32.]

On page 5th the allegation is made that when Philip Fabel, on the 26th of January, 1876, and for some days before and after, went to Sewickly to close the pur-

chase of the land, the books of Frederick Fabel in his business as a chandler, show that Philip Fabel had made the entries in his father's books in his own handwriting.

This statement is true as far as it goes, but is defective as a ground of inference that Philip Fabel was in Louisville at that time, for the same fact exists as to every entry in the books from July, 1872, to June 30th, 1876, [R. P. 65] within which time [in 1874] he had gone to Beaver, Pennsylvania, and married Kate Dippold.

It is also defective because it does not state that Philip Fabel was the only and exclusive book keeper of his father in the chandlery, and when he was gone "nobody kept" the books; but memoranda were kept during his absence, from which he made the entries in the books on his return. [R. P. 55.] This latter fact was not testified in explanation by the witness, but had been proven by the examination of the Plaintiffs before the books were, or were expected to be, produced.

It is claimed on pages 5th and 6th, that Weaver kept the books in the absence of Philip Fabel. Weaver testified, in the absence of Philip Fabel, he, in 1876, "kept the books up—the cash book and blotter, or day book, and journal, the entry book, or order book, etc." [R. P. 37.] Philip Fabel testified Weaver did not keep the books, but he kept "the day book for entering the sales from the order book into the day book." The day book in which Philip Fabel's entries were made was the regular, or general day book.

If Weaver ever had at any date made any entry in that book, the Plaintiffs doubtless would have shown such an entry in the handwriting of Weaver. But no such entry was shown, although the books, all the time that Weaver was there, were at their command.

On page 6th Plaintiffs state "the ledger of the elder Fabel * * * * showed an account kept by the father against Philip Fabel, * * * in which were charged the sums of money he paid Philip during the year 1876. Those sums amounted to twelve hundred dollars, but did not show the $10,000 that was paid in cash when the deeds passed."

The books in which the charge for $1,200 occurred were the books which belonged and related to the accounts of Frederick Fabel in his business as a chandler. The $1,200 there charged was the salary paid to him for his services in that business, after he was married, and were a part of the expenses of the business, and should appear on those books. But the advances of the father to his children outside of that business were not kept there, as was abundantly proven. It might as well be expected the accounts for moneys paid on account of the farm and coal property which Frederick Fabel bought, held and operated with Jacob Krauth, in which he had $18,000 in cash, [R. P. 42] should appear in his books as a chandler.

It is said, on page 7th, Frederick Fabel "on February 7th, 1876, borrowed $2,000 from a bank, on the 25th of March, $2,000, and on April 7th, $3,000 from another." This is explained by the fact that Frederick Fabel could get the money at 7 per cent., on his own credit, and by carrying his customers' paper he received 10 per cent. [R. P. 67 and 68.]

On page 8th it is alleged Weaver "testified that Frederick Fabel made it a rule to deposite his cash every day, and he did not keep large amounts in the store; and that he had never, during the several years he was employed there, known so large a sum as $10,000 being in the store." Weaver was discharged for a reason known to him. [R. P. 68.]

It appears from the statement of the Masonic Bank, [R. P. 160, 161 and 162] that on the first of every month from July 1st, 1875, to July 1st, 1876, Frederick Fabel drew out of that bank nearly all the balance he had in it, and during six months of that time he drew exactly $1,500 on the 1st day of the month, leaving the deposits of cash made outside of this amount to carry on the current business. This was probably his monthly profits in the chandler business alone, aggregating $18,000 a year, on a business of $100,000, and Jacob Krieger, President of that bank, testified "I don't think he [Frederick Fabel] would deposit all his money in bank." [R. P. 103.]

BRIEF OF ARGUMENT.

I.

Defendants prove a fair and bona fide purchase.

On the 13th day of June, 1879, the Plaintiffs filed a Bill in Equity in the District Court of the United States for the Western District of Pennsylvania, to cancel two deeds for lands in Beaver county, Pennsylvania, made by John Dippold and wife to Philip Fabel and wife, dated respectively on the 22nd and 26th days of January, 1876, on the ground that the lands were conveyed with intent to hinder, delay and defraud creditors of John Dippold. Answers under oath were not waived.

The Defendants served, John Dippold and Nannie Dippold, his wife, and Philip Fabel answered under oath and denied all the material allegations in the bill, which charged collusion, conspiracy, or intent to hinder, delay or defraud, and alleged that the purchase by Philip Fabel and wife was *bona fide*, and the full and valuable consideration of $28,000 actually paid. The District Court, on the merits, found the facts in favor of the Defendants, and, in accordance therewith, entered a decree dismissing the bill with costs.

Appeal was taken by the Plaintiffs to the Circuit Court, and after hearing, the decree of the District Court was affirmed, from which this appeal was taken.

There was no error in the decree of the Circuit Court.

These deeds, whose making, delivering and recording are alleged in the Bill [R. P. 5 and 6] are *prima facia* evidence of title in Fabel and wife.

"In general it may be taken for granted that wherever a *prima facia* right is proved, or admitted by the pleadings, the *onus probandi* is always upon the person calling such right in question. And here it may be observed that a court will always treat a deed or instrument as being the thing which it purports to be, unless the contrary is shown; and therefore it is incumbent upon the party impeaching it to show that the deed or instrument in question is not what it purports to be." [1st Daniels, Ch. Pl. and Pr. 850.]

The Plaintiffs affirm fraud, the Defendants deny it. "The party maintaining the affirmative of the issue has the burden of proof cast upon him both in law and in equity." [Pusey et al. vs. Wright, et al. 31st Pa. St. 387.]

The denials by the answers in the case are clear and positive. [R. P. 8, 9 and 10.] To overthrow the answers alone requires "Evidence of greater weight than the testimony of a single witness." [Daniels, Ch. Pl. and Pr. 844, and note 7.]

II.

There was no sufficient evidence to overcome this prima facia presumption, or to sustain the allegation that the deeds were made with intent to hinder, delay or defraud the creditors of John Dippold & Sons.

The firm of John Dippold & Sons was composed of John Dippold, John H. Dippold, Martin Dippold and Jacob Dippold.

They were adjudged bankrupts on the first day of March, 1878. [R. P. 4.]

The deeds were acknowledged on the 26th day of January, 1876. [See testimony of Smith, the Notary, R. P. 153.] They were delivered to Philip Fabel the same day or soon after. [R. P. 141, 54, 55, 85 and 86.]

The whole consideration, $28,000, was paid by Fabel to Dippold at the time of the delivery, $10,000 of it by prior indebtedness of Dippold to Frederick Fabel for borrowed money; $10,000 in cash, and $8,000 by notes of Philip Fabel to Dippold, at four, six, eight and twelve months. [See testimony of Fabel, R. P. 32; Dippold, 83, 84, 86, and 89; McDonald, 140 and 141.]

The deeds were sent by Fabel from Louisville to McDonald for record in December, 1877. [R. P. 57 and 144.]

They were recorded on the 16th of February, 1878. [R. P. 144 and 145.]

John Dippold and Philip Fabel were called by the Plaintiffs and gave their testimony as if under cross examination, in pursuance of a Pennsylvania statute. That cross examination was thorough and exhaustive, and no material contradiction or inconsistency was developed. Their answers were full and frank. In every material fact relating to the transaction, they are fully sustained and coroborated by McDonald, who had been married to to a daughter of John Dippold, who had died prior to the purchase by Fabel. McDonald had effected the sale for Dippold. He had assisted in drawing the deeds; he saw the money paid; drew the notes; saw the deeds delivered, and subsequently received them from Fabel and placed them on record.

Smith, the Notary, proves the making, signing and acknowledgment of the deeds over two years before any allegation or suspicion of bankruptcy was shown to exist. There was no evidence that Fabel, who lived about five hundred miles from John Dippold, when he made the purchase knew of any indebtedness, except the $10,000 owing to his father, which was paid by the sale.

John Dippold & Sons, prior to 1876, and at the time of the sale of the land, were engaged in the coal business, and building bridges, excavating tunnels for railroads. [R. P. 138.]

The firm had an office at Louisville, Kentucky. About ninety days before the sale to Fabel the firm sunk a tow of coal, and the money borrowed from Fabel was needed to pay the notes given for the coal to parties from whom it was bought, or other pressing indebtedness. [R. P. 150.]

The firm, after this, continued to do business, in good standing, for over two years. In 1876 or 1877 John Dippold entered into partnership with J. Sharp McDonald, they doing business as Dippold & McDonald in construction of the Eads jetties and the coal business. Both firms seemed to have good credit, as shown by the testimony of the numerous bankers introduced by the Plaintiffs. Except the adjudication in bankruptcy there was no evidence of the insolvency of John Dippold & Sons. McDonald, who from his intimate knowledge of the business and property of Dippold, referring to the 25th of June, 1882, in answer to the Plaintiff's question: "Did you know he was insolvent?" answered: "I don't believe to-day he was insolvent."

The price paid by Fabel was not shown to be inadequate. Clark, the Cashier of the Tradesmen's National Bank, which was one of the largest creditors, testified after the panic of 1873, Dippold valued the property as sufficient to be good security for $20,000. [R. P. 131.] At the time of the purchase it was thought to be worth $100 per acre, but was not worth that much in October, 1879. [R. P. 60.]

Other than this, no substantial attempt was made to prove inadequacy of price.

Every material fact to show the good faith of the purchase by Fabel, is proven by three candid substantial wit-

nesses: Philip Fabel, John Dippold and J. Sharp McDonald, and they are corroborated by Frank W. Smith, the Notary who took the acknowledgment of the deeds.

Although the testimony of Fabel and McDonald was taken as on cross examination by the Plaintiffs, the Court admitted the testimony and fully considered it. [R. P. 11]

J. Sharp McDonald was entirely disinterested, and without any financial bias.

III.

The Plaintiffs did not by any substantial evidence refute the fairness of the transaction.

To overcome the *prima facia* presumption of good faith established by the deeds, the answers under oath of the Defendants and the positive testimony of four witnesses, the Plaintiffs set up:

a. That John Dippold was indebted in 1876, but they do not attempt to prove that he was insolvent at that time; nor that he and his firms did not have ample means to pay their debts. It incidentally appears from the evidence that about the time, and after these conveyances, he had a very valuable coal property, [R. P. 77, 94 and 136] three steamboats, "The Tigress," "The John Dippold" and "The Charley McDonald," with a large number of coal barges.

The firms of Dippold & Sons were doing business both about Pittsburgh and Louisville, and Dippold & McDonald engaged in both the coal business and on the jetties for two years after conveyances, with good credit.

b. Possession of the land by Dippold after conveyance.

John Dippold, was father in-law and father of the grantees. Dippold & McDonald testify the grantor was to have

2 years to buy the land back if he could. [R. P. 88 and 150.] Under such circumstances it would hardly be expected that Dippold would be turned out immediately.

c. The purchaser did not record his deeds until the 16th of February, 1878. He sent them for record in December, 1877. It is not at all uncommon that deeds are recorded for years after delivery. Non-recording is evidence of fraud. A creditor's debt is not within the recording acts in Pennsylvania. [Rodgers vs. Gibson, 1 Yeates 111; Morris vs. Zeigler, 71st Pa. St. 450].

d. The conveyance was to Fabel and wife.

If Philip Fabel had been insolvent at the time of his purchase, this, as to his creditors, might have been a circumstance, but it could not wrong Dippold's creditors. That Philip Fabel should be willing to have his wife a joint owner in the home of her girlhood does not suggest such an unusual state of affairs as to justify any inference of fraud.

e. The Plaintiffs allege the grantor made declarations of ownership after the date of the deeds.

This is denied by Dippold, who states he did offer Clark security on his coal property, but that declarations of ownership as to the Fabel land, referred to by Clark, were not made after the sale. [R. P. 93.] Clark, on the part of Plaintiffs, testified such declarations were made after the sale. [R. P. 131.] But such declarations of John Dippold, even if made after the sale, in the absence of Phillip Fabel, who lived about five hundred miles distant, were not evidence against Fabel to impeach his purchase.

f. Alleged improbability of Dippold borrowing money from Fabel without written evidence.

Dippold, when he landed coal at Louisville, would go to Frederick Fabel, or to Philip Fabel, his son-in-law, and get a loan, to be returned in a few days, to pay off his hands. Fabel would make a memorandum of it and place it in his safe. It was expected to be paid within a few days, usually within thirty, or sixty at the farthest. Prior to January, 1876, these temporary loans were made during the course of one or two years. The greater part had been returned and the memoranda destroyed.

In January, 1876, in consequence of the heavy loss of a tow of coal, Dippold asked the loan of $10,000. This brought into review the balances of prior temporary loans, which were found to be $10,000. [R. P. 51 and 86.]

These temporary loans are a common custom with both lumbermen and rivermen. Fabel declined to make the loan of $10,000 when so large a balance of the temporary loans remained unpaid. This brought about the negotiations for the purchase of this property, which were not closed at that time, but subsequently closed by Dippold through J. Sharp McDonald.

g. Purchase was made without advice of counsel.

If this were a badge of fraud it would impair a great majority of the titles to land held by those who are not accustomed to *deal* in real estate.

When dealing with those in whom they have confidence, such purchasers usually assume that an undisputed possession and a general understanding that the title is unquestioned, is sufficient evidence of title in the grantor. This was the state of facts in this case.

h. The grantee sending unrecorded deeds by registered letter.

The evidence does not show whether the deeds were sent by letter or by private hands; or whether, if by letter, the letter was registered or unregistered. But, if sent as stated by the Plaintiff, it would be of no weight, for deeds are very frequently sent direct to the Recorder; and more frequently by unregistered than by registered letters.

i. Procuring broker to exchange small bills for large ones and paying in cash instead of by check.

The closing of the purchase was not to be done in a city, nor, so far as the evidence shows, in any cosiderable town. The land lay in Beaver county and John Dippold, the grantor resided there. He had had the deeds prepared by McDonald and they were at Sewickly awaiting the coming of the purchaser. It does not appear that Philip Fabel ever kept a bank account, or ever drew a check on his own account in his life. It is scarcely probable he would open a bank account for this single transaction. Philip Fabel testified he got the larger bills by exchange of smaller ones from J. W. Anderson, in Louisville, who, he thought, was a street broker. [R. P. 53 and 56.] This would naturally be done for convenience of carriage. The complainants called a large number of witnesses who were bankers and brokers to prove they did not know such a man, and also that his name did not appear in the Louisville directory. There is no allegation Anderson had any office in Louisville, or lived or boarded within the city limits; nor that he did any considerable amount of business. It was in Oct. 1879, that witnesses testified, three years and nine months after the exchange of the small bills for the larger ones. That cashiers of banks should not remember for that period a man whom they may never have known at all, or with whom they had little, if any business, is not

surprising. It would be more extraordinary if they could tell, after that lapse of time, every person by name for whom they might have exchanged money.

j. "*Extraordinary allegations on the part of the grantee as to the manner of procuring the money which he alleged he paid the grantor for the deeds.*"

Philip Fabel says he got the money from his father, and reported to his father every time he got it; that he was the bookkeeper of his father, and general business manager in the chandlery, which was one of his father's chief businesses; that his father had entire confidence in him. These statements are generally corroborated by all the testimony in the case. That when temporary loans were made to Dippold, either by himself or his father, memoranda were placed in the safe, and his father, from resources outside of the chandlery, supplied the amount shown by the memoranda, so the books squared.

The father had been long in business, was honest and prosperous, and had become old with a hundred thousand dollars of wealth. [R. P. 67.] He had practically turned a business of $100,000 per year over to his three sons. [R. P. 69.] He was thoroughly German and secretive as to his money matters. His business had not been run in the common ruts. [R. P. 103.]

As an honest German family they all worked together without definite legal contracts or formal modes. Philip was the elder son, best informed and most trusted. A disregard of ordinary customs in legal forms is illustrated by the fact that, although the father died in July, 1878, up to the 25th of October, or, so far as the evidence shows, to this date, no letters of administration, or inventory of the estate, was ever taken or filed. The dividends on his bank stock had been left uncalled for in the bank. [R. P. 109.] Yet

the family, a law unto itself, on the basis of common honesty and mutual confidence, have continued successfully to carry on the business of the father without a lapse or a disagreement, each son performing the work in which he was engaged before his father's death, faithfully and without suspicion or inquiry in the departments allotted to the others. [Vide R. P. 44, 45, 46, 47, 67, 68 and 69.] The whole testimony in the case clearly shows that the transactions of this family were upright, although not done to any considerable extent through lawyers, banks, or in banking methods. As the father had not been in the habit of depositing all of his money in the banks, [R. P. 103] nor conducting all his business through lawyers, it should not be assumed as a badge of fraud that his son did not do so.

k. "*Grantees' failure to account for the disposition of the alleged purchase money.*"

Ten thousand dollars of it was paid on a debt, which was clearly proven by three witnesses. John Dippold testified he paid the balance out in paying notes. [R. P. 86 and 72.] Plaintiffs partly corroborate him by proving there were many notes out, issued by the several firms of which he was a member. They claim because John Dippold could not tell what specific notes he paid, therefore, he swore falsely. It should be borne in mind that the testimony was given by an old man, of good repute for honesty, three years and nine months after the notes were paid; that he was a member of two different firms, both of which had outstanding paper; that the business extended from the Monongahela river to the mouth of the Mississippi; that notes were made or renewed by four different persons beside himself, and, as he stated in his testimony when earnestly pressed by Plaintiff's counsel with the following question:

Q. "You can't remember it at all?"

A. "No, sir; I cannot any more. My memory used to be good, Mr. Watson, but since I was sick, I lost it." [R. P. 88.]

And in answer to a similar question:

A. "No, sir; generally I kept in my head everything most always."

Under all these circumstances the inference that John Dippold testified falsely is not warranted by the facts, and is unjust. If the same test proposed to be applied to John Dippold was applied to Cyrus Clark, a younger man, the cashier of the Tradesmen's National Bank, one of the Plaintiffs' most interested and acute witnesses, his testimony would be declared false; for, when first called, he could not even state the amount of John Dippold & Son's paper held by that bank, still less the amount of each note, who were the makers, or who were the endorsers. [R. P. 130.] He was excused from the stand to go and examine the books to find out and was recalled to testify after refreshing his recollection. [R. P. 132, 135 and 136.]

But even if John Dippold did not apply the balance of the money to his debts, but fraudulently kept it himself, no act or wrong of his, after the delivery of the conveyances, "would be any evidence of fraud."

If a conveyance is not fraudulent when made it cannot be made fraudulent by any matter *ex post facto*. [Beck vs. Parker, 65th Pa. St. 262.]

The conclusion of the court, as so fully vindicated by the opinion of the District Judge, was not erroneous.

G. A. JENKS,
Counsel for Appellees.